RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

Concerning the Manufacture, Distribution and Sale of Yeast

DEPARTMENT OF JUSTICE
OTTAWA

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RESTRICTIVE TRADE PRACTICES COMMISSION

REPORT

CONCERNING THE MANUFACTURE DISTRIBUTION AND SALE OF YEAST

COMBINES INVESTIGATION ACT

Ottawa
1958

RESTRICTIVE TRADE PRACTICES COMMISSION

C. Rhodes Smith, Q.C., M.A., LL.B., B.C.L.
Chairman

A. S. Whiteley, B.A., M.A.
Member

RESTRICTIVE TRADE PRACTICES COMMISSION

OTTAWA

May 14, 1958

Honourable E. Davie Fulton, P.C., Q.C., M.P.,
Minister of Justice,
Ottawa.

Sir:

I have the honour to submit to you herewith the report of the Restrictive Trade Practices Commission dealing with the manufacture, distribution and sale of yeast in Canada.

The matter was brought before the Commission by the submission of a statement of the evidence obtained in an inquiry by the Director of Investigation and Research under the Combines Investigation Act and has been dealt with in accordance with the provisions of Sections 18 and 19 of the Act.

Evidence and argument in regard to the Statement of Evidence were heard by the Commission in Montreal on December 16th and 17th, 1957. Messrs. S. F. Sommerfeld and R. M. Davidson appeared on behalf of the Director of Investigation and Research and Mr. Hazen Hansard, Q.C., appeared on behalf of Standard Brands Limited.

Yours faithfully,

(Sgd.) C. R. Smith
Chairman

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CHAPTER I

INTRODUCTION

1. Reference to the Commission

This inquiry was undertaken by the Director of Investigation and Research under the Combines Investigation Act, and came to the Restrictive Trade Practices Commission when the Director, in accordance with Section 18 of the Combines Investigation Act, submitted to it a statement of the evidence obtained in the inquiry. The Statement of Evidence was dated the 30th day of August, 1957. The Director at the same time submitted a copy of the Statement of Evidence to Standard Brands Limited, against which corporation allegations were made therein:

The origin of the inquiry is given in the Statement of Evidence, as follows:

> "2. In June of 1955, following reports that had appeared in the press relating to the acquisition of Best Yeast, Limited, by Standard Brands Limited, some informal inquiries were made of the three producers of yeast in Canada, Standard Brands Limited, Fred A. Lallemand & Company Limited, and Best Yeast, Limited. These inquiries took the form of a questionnaire which was sent to each of the Companies.
>
> 3. Following a study of the material obtained from the three Companies in reply to the questionnaires, Best Yeast, Limited, and Standard Brands Limited were advised by letter dated November 17, 1955, that the acquisition of the stock of Best Yeast, Limited, by Standard Brands Limited was considered to put the Director upon inquiry under the Combines Investigation Act. . . ."

The evidence relied on by the Director is almost entirely in writing, and was obtained from the following sources:

(a) Replies by Standard Brands Limited, Fred A. Lallemand & Company Limited and Best Yeast, Limited to questionnaires sent to them by the Director.

(b) Returns submitted by Fred A. Lallemand & Company Limited to the Director pursuant to requirements under Section 9 of the Combines Investigation Act.

(c) Financial Statements of Standard Brands Limited, Fred A. Lallemand & Company Limited, Best Yeast, Limited and International Patent Company Limited supplied to the Director at his request.

(d) Returns made from time to time to the Dominion Bureau of Statistics by Standard Brands Limited, Fred A. Lallemand & Company Limited, Best Yeast, Limited, Western Pure Foods Limited and its predecessors: each of the companies concerned having given the Director permission to examine the returns made by it.

(e) Certain information published by the Dominion Bureau of Statistics and other published material referred to in the Statement of Evidence.

(f) Public records of the Department of the Secretary of State, Companies Branch, Ottawa, Ontario.

(g) Public records of the office of the Provincial Secretary, Winnipeg, Manitoba.

(h) Books, papers, records or other documents taken from the premises of Standard Brands Limited, of which photographic copies were made, each of such documents being identified by the code letters B.S.A. placed in the upper right-hand corner, and by serial numbers placed in the lower right-hand corner running consecutively from 1 to 127, both inclusive.

(i) Other information furnished voluntarily in writing by Standard Brands Limited and Best Yeast, Limited.

During the inquiry conducted by the Director, two witnesses were examined viva voce under oath, the examination taking place before the Chairman of this Commission at Winnipeg, Manitoba, on February 8th, 1957. They were Alexander Bain Flett and Leslie Edward Avery, formerly officers of Western Pure Foods Limited. Their evidence was confined to matters relating to Western Pure Foods Limited and its acquisition by Standard Brands Limited in the spring of 1935.

The allegations set out in the Statement of Evidence are as follows:

"122. It is alleged that, by reason of its control over Best Yeast, Limited, Standard Brands Limited constitutes a merger, trust or monopoly within the meaning of section 2(e)(i) and (ii) of the Combines Investigation Act. Section 2 defines a 'merger, trust or monopoly' as meaning 'one or more persons

(i) who has or have purchased, leased or otherwise acquired any control over or interest in the whole or part of the business of another, or

(ii) who either substantially or completely control, throughout any particular area or district in Canada or throughout Canada the class or species of business in which he is or they are engaged.'

A merger, trust or monopoly is forbidden where (in the words of section 2(a)) it 'has operated or is likely to operate to the detriment or against the interest of the public, whether consumers, producers or others.'

123. If Standard Brands Limited and Best Yeast, Limited, had, while otherwise maintaining their independence, entered into an agreement to place their manufacturing and pricing policies under a single control, and to eliminate competition between them, this, it is submitted, would constitute detriment to the public within the meaning of the legislation. The effect of the merger between them has been to place such policies under a single control and to eliminate competition between them in a manner more permanent than by agreement.

124. It is, therefore, alleged that the merger, trust or monopoly operates and is likely to operate to the detriment or against the interest of the public for the following reasons:

(a) It has eliminated all competition in the manufacture, distribution and sale of dried bakers' yeast in Canada;

(b) It has eliminated all the competition that otherwise would have existed in the manufacture, distribution and sale of fresh consumers' yeast in Canada;

(c) It has reduced from three to two, the number of manufacturers of dried consumers' yeast throughout Canada and has substantially reduced competition in the manufacture, distribution and sale of that commodity, particularly in the Eastern region;

(d) It has reduced from three to two, the number of manufacturers of fresh bakers' yeast in Canada and has substantially reduced competition in the manufacture, distribution and sale of that commodity, particularly in the Eastern region;

(e) It has already resulted in the elimination of a price differential in respect of one brand of yeast, thereby resulting in a higher price level for such brand than would reasonably have been expected had the merger not taken place, and it has put it in the power of Standard Brands Limited to eliminate other price differentials which have resulted in lower price levels to the trade and to the public, and to prevent other such differentials from occurring.

125. While the evidence indicates that the merger had led to certain changes in the manufacturing and selling relationships between Standard Brands and Best Yeast brands, notably shifts of production between different plants and the handling of sales of Standard Brands and Best Yeast brands by the one sales force, there is nothing on the record to indicate that such changes were the motivation for the merger or that they involve any such economies of production or distribution as would compensate for the elimination of competition between the two Companies."

2. Hearing Before the Commission

Following receipt of the Statement of Evidence, the Commission, by Order dated the 27th day of September, 1957, fixed Monday, the 16th day of December, 1957, at 10 o'clock in the forenoon, in Room 207, Postal Station "B", 685 Cathcart Street in the City of Montreal in the Province of Quebec, as the date, time and place at which argument in support of the Statement of Evidence could be submitted by or on behalf of the Director, and at which persons against whom an allegation had been made in the Statement would be allowed full opportunity to be heard in person or by counsel, in conformity with Section 18(2) of the Combines Investigation Act. In giving notice of the hearing the Commission further advised Standard Brands Limited and its counsel that they would have the opportunity thereat of calling witnesses and of submitting additional documentary evidence.

Pursuant to the Commission's Order, the hearing in Montreal took place December 16th and 17th, 1957, before the

Chairman and Mr. A. S. Whiteley, Member. The following appearances were entered:

S. F. Sommerfeld	)	for the Director of Investigation
R. M. Davidson	)	and Research

Hazen Hansard, Q.C. for Standard Brands Limited

Before argument was presented the following witnesses were examined and certain Exhibits numbered H-1 to H-18, both inclusive, were filed.

Irving Simpson	- Manager of the Capital Assets Department of Standard Brands Incorporated, U.S.A.
John Aate Norlin	- Vice-President of Racey, MacCallum & Associates Limited, Montreal, in charge of industrial engineering for that company
David William Wallace	- President of Standard Brands Limited.

For convenience, when an excerpt from the transcript of the evidence of Mr. Flett or Mr. Avery is referred to in this report, the reference will be as follows: (Evidence, p. . . .). Similarly evidence taken before the Commission will be referred to as follows: (Hearing, p. . . .). Documents taken by the Director from the premises of Standard Brands Limited will be identified by their serial numbers.

3. Position Taken by Standard Brands Limited with Respect to the Statement of Evidence

In advance of the hearing and at the request of the Commission, a letter was received from counsel for Standard Brands Limited, indicating the position the company was taking with respect to the facts and conclusions set out in the Statement of Evidence. The letter disputed the accuracy or relevance of many specific facts as found in the Statement of Evidence, and also contended that in relation to several matters described, the Statement gave an incomplete or distorted picture of the true situation. It was indicated that evidence would be led to correct these misstatements and inaccuracies and to present the true picture.

The letter further challenged in its entirety Chapter VIII of the Statement of Evidence, which deals with the significance of the acquisition of Best Yeast, Limited by Standard Brands Limited, and concluded by denying all of the allegations of the Director set out in section 1 of this chapter.

CHAPTER II

THE YEAST INDUSTRY

1. The Nature of Yeast

Yeast is a microscopic vegetable plant or organism, of which there are many strains and varieties. Mr. Wallace, President of Standard Brands Limited, gave evidence that it is widely found in many states in nature, and that animals obtain yeast by feeding on such natural products as berries and roots (Hearing, p. 88). The growth process of yeast was described by Mr. Wallace thus:

> "Now, without being too technical, I would like to point out that yeast is grown by what is known as budding; in other words, a single cell of yeast will throw out a bud or a little branch and then another one, and then these continue to throw out branches or buds."
>
> (Hearing, p. 91)

Yeast requires a suitable nutrient medium in which to grow, and several kinds of raw materials have been used for this purpose.

The Statement of Evidence points out that many forms of yeast have a marked ability to change sugar into alcohol and carbon dioxide. This property has caused some forms to be used in the leavening of bread, and others in the manufacture of wine, beer and other forms of alcohol. The Statement adds that it is also believed that yeast may have some therapeutic properties, but that this is a minor aspect of its use.

2. Yeast for Baking Purposes

This inquiry has been concerned only with yeast used primarily for baking purposes, and has no reference to other types whose properties render them more useful for other purposes, e.g., brewing. It may be noted here that during the latter half of the

19th century and particularly during the 20th century great improvements have occurred in the quality of yeast manufactured specifically for baking purposes, these results being achieved both by careful selection and development of yeast strains possessing good baking qualities and by improved manufacturing methods.

(a) Classes of Yeast Sold and Types of Customers

For business purposes yeast for baking is sold in two states of manufacture, fresh and dried. It is also sold to two main classes of customers, commercial bakeries and private households. Yeast for commercial bakeries is called bakers' yeast, while that for private households is called consumers' yeast. Yeast for commercial bakers is generally compressed fresh yeast sold in cakes, under refrigeration; the cakes being commonly one pound in size, similar in shape to a pound print of butter. Some bakers' yeast is dried yeast, granular in form and sold in cans, for use chiefly in camps such as lumber or construction camps in which delivery or handling under refrigeration would not be feasible. Mr. Wallace stated that, in addition to sales to such camps, a considerable amount of dried yeast in cans is sold to housewife consumers in Western Canada, particularly in Manitoba and southern Saskatchewan (Hearing, pp. 98 and 104).

In the earlier years of this century consumers' yeast was sold in two forms. One of these was a small cake of dried yeast, which contained malt, flour, corn meal and mineral salts to assist in hydration of the dried yeast. Mr. Wallace described these other materials as "filler", and stated that only about 6 per cent of this type of yeast cake was actually yeast. His evidence was that the dried yeast cake weighed 17.35 grams, of which one gram was yeast (Hearing, p. 273). This type of yeast cake disappeared entirely by 1948, being replaced by a dried granular yeast packaged in a small envelope and introduced in 1944. This new form of consumers' dried yeast is all yeast, and practically all of it is living though dormant. Though less than half the weight of the old consumers' dried yeast cake, there is, Mr. Wallace stated, eight times as much yeast in the envelope as there was in the cake.

The second form of consumers' yeast was, and still is, a small fresh cake of solid yeast which, like bakers' fresh yeast, is sold under refrigeration to prevent rapid deterioration. Over the years the size of the fresh consumers' cake has varied. At first it was manufactured in a half ounce size; later a two-thirds ounce cake was introduced, and later still a one ounce size. In most parts of Canada the dried granular consumers' yeast has largely supplanted the fresh consumers' cake. In the Maritimes, however, a substantial

amount of fresh consumers' yeast is still sold. Mr. Wallace described fresh yeast for the consumer as a dying business (Hearing, p. 122).

For many years the general trend in Canada has been for more baking to be done by commercial bakers and less by the housewife. Even with respect to dried consumers' yeast, Mr. Wallace said the consumption on a per capita basis is declining, though the total sales have increased slightly (Hearing, p. 183). In his opinion, if it were not for the large number of New Canadians who have come from mid-European countries, who are used to baking and still like to bake their own bread, the situation with regard to consumers' yeast would be much worse than it is today (Hearing, p. 123).

The predominance of commercial baking in the fresh yeast field is clearly shown in the Statement of Evidence by reference to a Dominion Bureau of Statistics publication, which shows that in 1954, out of a total production in Canada of 25, 622, 503 pounds of fresh yeast, 21, 560, 514 pounds went into commercial production of baked goods.[1] Mr. Wallace put the position of commercial baking in the fresh yeast field at an even higher level. He said that only about 3 per cent of fresh yeast for baking was sold to householders, the balance going to commercial bakers. On the other hand, he said that the share of dried yeast used by commercial bakers was infinitesimal (Hearing, pp 105-7).

Mr. Wallace's opinion that the consumption of consumers' dried yeast has declined on a per capita basis in recent years is not fully borne out by Dominion Bureau of Statistics records. Figures for shipments of dried yeast, based on returns made by the manufacturers to D.B.S., indicate that in 1948 and 1949, by which years the old form of dried yeast cake had disappeared, shipments of dried yeast by Canadian manufacturers were 1, 064, 294 pounds and 1, 051, 015 pounds respectively, but were higher than either of those amounts in each year down to and including 1955. The year 1954 showed the highest shipments in the period, viz., 1, 253, 638 pounds, a slight drop occurring in 1955, when 1, 228, 458 pounds were shipped.

Figures obtained from Standard Brands Limited since the hearing show that, for consumers' yeast produced by that company and by Best Yeast, Limited, the sales trend since 1955 for fresh yeast has been downward and for dried yeast has been upward. The figures on a poundage basis are as follows:

---

(1) D.B.S. Bread and other Bakery Products, 1954

	Fresh Consumers' Yeast	Dried Consumers' Yeast
1955	761,854 pounds	950,522 pounds
1956	726,908 pounds	971,433 pounds
1957	690,153 pounds	1,011,064 pounds

A similar trend is shown by the figures for the number of leavening units sold, which are given in Table 1.

Table 1

STANDARD BRANDS LIMITED

(Including Subsidiaries)

Consumer Yeast Sales

			Leavening Units for 4 loaves		Units Per Capita	Inc. or (Dec.)
1930	Cakes	- Dried	57,676,216			
	"	- Fresh	23,748,668	81,424,884	7.976	
1935	Cakes	- Dried	65,389,926			
	"	- Fresh	19,956,835	85,346,761	7.869	(.107)
1945	Cakes	- Dried	24,235,800			
	"	- Fresh	25,605,993			
	Envelopes	- Dried	13,140,644	62,982,437	5.217	(2.652)
1955	Cakes	- Fresh	12,189,658			
	Envelopes	- Dried	53,894,618	66,084,276	4.210	(1.007)
1956	Cakes	- Fresh	11,630,524			
	Envelopes	- Dried	55,080,266	66,710,790	4.149	(.061)
1957	Cakes	- Fresh	11,042,451			
	Envelopes	- Dried	57,327,324	68,369,775	4.121	(.028)

The population figures used for the computation of per capita sales in the above table were taken from the D.B.S. Canadian Statistical Review, and are as follows:

	1930	1935	1945	1955	1956	1957
Canada (thousands)	10,208	10,845	12,072	15,698	16,081	16,589

This table indicates clearly the downward trend of total consumers' yeast sales of that company and its subsidiaries over the years since 1930, in terms of per capita of population use. If we segregate the dried yeast sales from total sales we get the following sales variation in relation to population:

Dried Consumers' Yeast Sales

(Standard Brands Limited and subsidiaries)

Year	Leavening Units	Population	Units per capita
1930	57,676,216	10,208,000	5.650
1935	65,389,926	10,845,000	6.029
1945	37,376,444	12,072,000	3.097
1955	53,894,618	15,698,000	3.433
1956	55,080,266	16,081,000	3.425
1957	57,327,324	16,589,000	3.457

On these figures it is seen that no significant trend in sales on a per capita basis can be observed during the last three years. The Commission does not attach much importance to the apparent increase from 1945 to 1955 in per capita sales, since in 1945 the old dried yeast cake had only begun to be supplanted by the new granular yeast, and the spreading knowledge of this better yeast may well have stimulated sales of dried consumers' yeast during the next few years.

(b) Characteristics of Commercial Yeast

The first requirement of good yeast is that it must be an effective leavening agent. However, from the point of view of a manufacturer, seeking to hold his old customers and gain new ones, uniformity of action and result is more important than mere effectiveness. A consumer of yeast, whether a commercial baker or a housewife, wants to know that when he or she employs a leavening agent the same result may be predicted every day in the year for every loaf of bread. Thus, unless a high degree of uniformity of action is assured the consumer will not be satisfied. The length of time required for yeast to perform the leavening process is also important to both classes of customer. On this point the evidence of Mr. Wallace shows, with respect to consumers' yeast, that considerable progress has been made through the years in reducing the time required for leavening bread dough. He gave the following time periods for the several types of consumers' yeast described above:

(i) For the old consumers' dried yeast cake (that produced by Standard Brands Limited being known as Royal Yeast), which was used for many years but disappeared by 1948 -- 16 hours and upwards.

(ii) For the one-half ounce cake of fresh consumers' yeast (that produced by Standard Brands Limited being known as Fleischmann's Yeast), which was used for many years prior to 1938 -- approximately eight hours.

(iii) For the two-third ounce cake of fresh consumers' yeast introduced in 1933 -- approximately seven hours.

(iv) For the one ounce cake of fresh consumers' yeast introduced in 1941 -- approximately three and one-half to four hours.

(v) For the dried granular yeast packaged in small envelopes and introduced in 1944 -- three to four hours (Hearing, pp. 115-6; Exhibit H-14).

Each of the five units referred to in the foregoing has been designed for the leavening of four loaves of bread. Since there appears to be no distinction in leavening quality between bakers' and consumers' yeast, no doubt similar improvements have occurred in bakers' yeast.

All yeast may be described as semi-perishable. This is particularly true of fresh yeast, which deteriorates very rapidly if not kept under refrigeration, the optimum temperature apparently being from 38° to 40° Fahrenheit. Even when kept under refrigeration in the manufacturing plant, distributed to retail stores in refrigerated trucks, and kept by the retail storekeeper under refrigeration, Mr. Wallace said fresh consumers' yeast should be no older than two weeks at the time the housewife buys it in the store, to permit her to take home two or three cakes and keep them in her refrigerator until used. The practice of Standard Brands Limited is to mark all such yeast with an expiry date. Their delivery men check the retailer's stock when making deliveries. All yeast on which the expiry date is found to be drawing near is replaced free of charge by new yeast and taken away to be destroyed (Hearing, p. 125).

Modern granular dried consumers' yeast is similarly marked with an expiry date, but is much less perishable. Mr. Wallace stated that with his company the expiry date was at first 90 days from date of manufacture but is now from 120 to 140 days. Such yeast is not kept under refrigeration and practically all of it

is marketed in the ordinary way through wholesalers to retail grocers. When a delivery man finds dried yeast in a grocer's store on which the expiry date has passed, it is also replaced and taken away to be destroyed. According to Mr. Wallace's evidence the proportionate amount of fresh consumers' yeast which is replaced and taken away by his company is approximately the same as that of dried consumers' yeast, viz., from 5 to 6 per cent (Hearing, p.181).

(c) Development of Yeast

Without attempting to trace the history of yeast from early times, it seems clear that for a long period of time, continuing until well into the 20th century, yeast for baking was chiefly produced by following brewery processes, in which the principal raw material for yeast growth was fermenting malted grain. The amount of yeast produced in proportion to raw material used was quite small, which is not surprising since brewery processes were concerned primarily with the production of alcoholic beverages rather than the production of yeast. Efforts were made throughout the 19th century and early 20th century, by developing new techniques, and by scientific research, to increase the yield of yeast from brewery processes. The first substantial increase in yield occurred in 1860, by what was called the "Vienna Process". Other technical improvements were developed but yields were still relatively small in proportion to raw material employed. The Statement of Evidence reports that only during the First World War, when a severe shortage of cereal grains caused European research workers to seek other sources of raw material for the production of yeast, did the most important advances occur in the yeast industry. Two German scientists worked out a method of producing yeast with beet molasses as the basic raw material, to which were added certain organic salts. There followed a period of rapid development along new lines, although the essential elements of current manufacturing processes are based on the methods developed by the Germans. The Statement of Evidence quotes a summary of this modern development found in a study of yeast published in 1954:

> "Yields greater than 100 per cent of compressed yeast based on weight of raw material can be obtained by modern methods (compared with yields of about 10 per cent from the Vienna process), and yeast of very great stability and fine keeping properties combined with remarkably vigorous and steady dough fermentation properties can be produced."[1]

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(1) John White, B.Sc. (Birmingham) F.R.I.C., Yeast Technology (John Wiley and Sons, New York, 1954).

3. Yeast Manufacturers

The compressed yeast industry in North America was started in 1868 by Charles Fleischmann, who, Mr. Wallace testified, had brought with him from Europe in a test tube yeast of a very fine strain. At that period United States bakers usually made their own yeast in a big tub in their own shop. As Fleischmann was able to demonstrate to the bakery trade that his yeast was better and more uniform in action than that made by the bakers themselves, his business grew. Fleischmann's Yeast came on the Canadian market in 1876 and the company began manufacturing in Canada early in this century (Hearing, p. 131). In the meantime other companies had entered the field.

It is not necessary, for the purposes of this report, to trace in detail the changes that have occurred among Canadian yeast manufacturers. It is sufficient to state the position in 1955, just prior to the acquisition which led to this inquiry. At that date the industry consisted of the following three manufacturers:

(a) Standard Brands Limited (in this report generally referred to as "Standard Brands"), a company incorporated under the Canadian Companies Act by Letters Patent dated August 27, 1929. Since 1941 it has been a private company. It is a wholly-owned subsidiary of Standard Brands Incorporated, a company incorporated under the laws of the State of Delaware, with its head office in New York, and which is the largest manufacturer of yeast in the world. Mr. Wallace stated that the parent company was formed in 1929 by the amalgamation essentially of three companies, the Fleischmann Company (yeast), the Chase & Sanborn Company (coffee), and the Royal Baking Powder Company (baking powder and other products). He stated further that the Canadian company, Standard Brands Limited, was an amalgamation of the Canadian subsidiaries and operations of those companies, the E. W. Gillett Company Limited being included only incidentally in the Canadian amalgamation because it was owned by the Royal Baking Powder Company. The Gillett Company manufactured yeast, largely consumers' yeast. Its American parent did not manufacture yeast (Hearing, pp. 167-9). The Canadian amalgamation included one other company, Canadian Diamalt Company Limited (malt extract).

Since 1929 Standard Brands Limited has extended its operations to other products by acquisition of other companies and has acquired two yeast manufacturing companies. These acquisitions are described in the Statement of Evidence as follows:

"51. . . .

(1) On November 7, 1934, the Company acquired the physical assets of Canada Cream of Malt Limited of Guelph, Ontario, a Company engaged in the manufacture of chocolate milk products and malt syrup. The business was operated as before until the property was sold on April 12, 1945.

(2) On March 26, 1935, Standard Brands Limited purchased all the issued and outstanding stock of Western Pure Foods Ltd. of Winnipeg, a Company engaged in the manufacture of baking powder, yeast, extracts, pickles, spices, etc. The Company was wound up and the charter surrendered on March 8, 1943, and the business itself gradually closed down.

(3) On February 7, 1946, Standard Brands Limited acquired all the issued and outstanding capital stock of Ingersoll Cream Cheese Company Limited of Ingersoll, Ontario, a manufacturer of cheese. By Supplementary Letters Patent, dated April 10, 1947, the name of the Company was changed to Ingersoll Cheese Company Limited. The business has been carried on as before the purchase with the manufacture of margarine being added since 1949.

(4) On April 21, 1955, Standard Brands Limited acquired the capital stock of International Patent Company Limited of Liverpool, N.S., the Holding Company controlling Best Yeast, Limited, a manufacturer of yeast. The Holding Company, International Patent Company Limited, is in the process of being wound up and all the shares of capital stock of Best Yeast, Limited, were transferred to Standard Brands Limited on August 24, 1955. Standard Brands Limited is continuing to operate the Company.

(5) On September 1, 1955, Standard Brands Limited acquired all the issued and outstanding capital stock of Dr. Ballard's Animal Foods Limited of Toronto, Ontario, a manufacturer of pet foods. Standard Brands Limited is continuing to operate the acquired Company. Dr. Ballard's Animal Foods Limited, a Dominion Company, wholly owns Dr. Ballard's Animal Food Products Limited, a British Columbia Company, which, in turn, has the following wholly owned subsidiaries:

(i) Favourite Foods Ltd.
(ii) Vancouver Rendering Co., Ltd.
(iii) Dr. Ballard's Fox and Mink Foods Limited
(iv) Dr. Ballard's (Ontario) Animal Foods, Limited

All of these subsidiary Companies of Dr. Ballard's Animal Foods Limited are non-operating and it is contemplated that all, except Favourite Foods, Ltd. and Vancouver Rendering Co., Ltd., will be wound up."

The Best Yeast acquisition is what led to this inquiry. Some reference to the acquisition of Western Pure Foods Ltd. will be made later in this report. The other acquisitions have no direct significance in the inquiry.

From the foregoing description it is apparent that Standard Brands produces, along with its subsidiaries, a diversified group of products, many of which may be described as semi-perishable food products. The Statement of Evidence summarizes the company's position as follows:

"52. Standard Brands Limited and its subsidiaries now produce yeast in plants at Calgary, Alberta, Liverpool, N.S., Ville LaSalle, Quebec and Thorold, Ontario. It produces margarine in plants at Calgary, Alberta, and Ingersoll, Ontario; pet foods at Calgary, Alberta, Vancouver, B.C. and Toronto, Ontario; cheese at its plant in Ingersoll, Ontario, malt syrup and dough-improver at its plant in Guelph, Ontario; and baking powder, coffee, tea, desserts, and lye at its plant at Ville LaSalle, Quebec."

In 1954 the total net sales of Standard Brands Limited were nearly $27,000,000, its net profit after taxes was slightly over $1,000,000, and it had an earned surplus of nearly $6,000,000. Sales of yeast in 1954 were about $5,500,000.

(b) Best Yeast, Limited (in this report generally referred to as "Best Yeast" or the "Best Company"), a company incorporated by Memorandum of Association under the laws of Nova Scotia, on January 31, 1935. At the beginning of 1955 its capital stock consisted of 20,000 six-percent cumulative preferred shares, having a par value of ten dollars each, all of which had been issued, and 30,000 common shares of no par value, of which 29,691 shares had been issued. Dividends on the preferred shares had been paid to June 1, 1950, but apparently no dividends had ever been paid on the common shares. The company operated yeast plants at Liverpool, Nova Scotia, and Thorold, Ontario. The latter plant was apparently completed in 1940 and produced only dried consumers' yeast and fresh bakers' yeast.

In addition to yeast the company manufactured or distributed a number of related products, including malt, baking powder, pudding powders and milk powders. However, prior to

1952 sales of yeast constituted well over 90 per cent of the company's total sales. In 1952 margarine was added to its products and the share of the company's sales held by yeast was reduced to some extent. Even so, in 1954 its sales of yeast were $668, 800, and its sales of all other products were only $172, 452 (Statement of Evidence, p.12, para. 38).

(c) Fred A. Lallemand & Company Limited (in this report generally referred to as "Lallemand"). The Statement of Evidence gives the following description of this company and its activities:

> "54. Fred A. Lallemand Refining Company of Canada Limited was incorporated under the Laws of the Dominion of Canada on February 15, 1915, with head office and plant in Montreal. On March 1, 1940, Supplementary Letters Patent were issued changing the name of the Company to Fred. A. Lallemand & Company Limited. The Company's balance sheet as at January 28, 1956, shows invested capital as approximately $385, 000. Net sales were $2, 177, 591 and net profit after taxes $27, 941. Earned surplus, including earnings transferred as at January 28, 1956, was $133, 000. Sales of yeast in 1955 amounted to $1, 144, 192.
>
> 55. The Company was organized as a family company, principally for the production of fresh yeast for the bakery trade. Until 1955, the Company and its successor also manufactured small amounts of fresh consumers' yeast and very small amounts of dried consumers' yeast. In 1955, the production of the former was discontinued and production of the latter increased from approximately $18, 000 to approximately $65, 000 in value. In 1956, dried yeast sales amounted to $93, 000. The Company also manufactures malt syrup for sale to bakeries and consumers' malt syrup for use in the preparation of home-brewed beer. Other products include yeast food, malt flour, baking powder and rope ban. It distributes these, along with products such as milk powder, nuts, coconut, etc., to the baking trade. It has also added a number of grocery products which are packed under its own label and distributed to the retail trade. These include imported cheese, walnuts, shredded coconut and, in Montreal, frozen foods. Brand names are 'DORIC' and 'PEERLESS'. Until 1954, the Company manufactured a small amount of fresh bakers' yeast under the brand name of 'CHAMPION' for distribution by D. J. Finlayson and Sons. This has now been discontinued.
>
> 56. Consumers' dried yeast was sold under the brand name 'REX' until 1954; in 1955 and 1956 the name

'LALLEMAND' was used, and since the beginning of 1957 it has been marketed under the 'DORIC' label.

57. In 1947, a group, headed by J. L. Levesque, incorporated Fred A. Lallemand & Company Limited under the Laws of Quebec and acquired all the assets of the Dominion Company. Roland Chagnon is now President and Majority shareholder of the new Company. In 1953, the Dominion Company filed a petition for surrender of its charter. The Quebec Company acquired an Ontario licence on August 11, 1954, and a Manitoba licence on May 4, 1955.

58. Fred A. Lallemand & Company Limited distributes partly through wholesalers and partly on a direct basis through its own delivery system. The Company has divisional sales offices in Winnipeg and Toronto and four salesmen operating in the Maritimes under direction from Montreal."

From the fact that for a number of years prior to the acquisition of Best Yeast by Standard Brands there were only three manufacturers of yeast in Canada, with one manufacturer very much larger than the other two, it will be evident that the yeast industry is a highly concentrated one in Canada. In the United States, where the parent company, Standard Brands Incorporated, also occupies a prominent position, the yeast industry is also highly concentrated. According to a report by a U.S. Congressional Committee (1) the four largest companies in the United States accounted for 87 per cent of the value of shipments of yeast in 1954.

4. The Process of Yeast Manufacturing

The prime requisite of yeast is that it should be vigorous in growth with uniform leavening powers day in and day out. Thus the first step of a yeast manufacturer is to obtain a suitable strain of seed yeast. From this seed yeast quantities of yeast are grown, as required, by the yeast plant. This yeast is checked frequently, perhaps daily, as to its keeping qualities and for signs of deterioration, and small quantities of seed yeast are added frequently, at regular intervals, to ensure that the strength of the

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(1) Concentration in American Industry. Report of the Subcommittee on Antitrust and Monopoly to the Committee on the Judiciary, U.S. Senate, 85th Congress, 1st Session, Washington, 1957.

strain is maintained. Standard Brands and its subsidiaries obtain their seed yeast from the parent company in the United States, and Mr. Wallace stated his belief that Lallemand also obtains some seed yeast from the United States (Hearing, pp. 179-80, 211-2, 214).

Yeast is grown in a fermenter, in which it is placed, along with certain quantities of water, a chief nutrient medium, and certain chemicals to assist in its growth. Mr. Wallace stated that the chief nutrient medium throughout North America is molasses. Either cane or beet molasses may be used, but because of its lower price, beet molasses is generally favoured. Best Yeast formerly used waste sulphite liquors from paper-pulp mills in both its plants, instead of molasses, but before the company's acquisition by Standard Brands, the Thorold plant had switched to molasses. Since the acquisition the Liverpool plant has also switched to molasses.

After 16 to 18 hours of growth in the fermenter the yeast is separated from the spent fermentation liquor and washed to get rid of salts, gums, colouring matter, and unpleasant flavours. This is accomplished by a centrifugal yeast separator, which yields the yeast as a well-washed yeast "cream" containing up to three-quarters of its weight as yeast. This yeast "cream" is then put through a series of presses to remove as much water as possible. It has now become fresh compressed yeast. All that remains is to mix it with a very small quantity of oil in a machine which extrudes it in long rectangular shapes. These shapes vary in size depending upon whether the yeast is to be sliced into one pound bakers' yeast blocks or into small consumers' yeast cakes. When sliced and wrapped it is at once put under refrigeration.

Down to the point at which it has become fresh compressed yeast, all yeast is treated in the same fashion. A further step is required if it is to be sold as dried yeast. If the end product is intended to be dried, yeast strains capable of withstanding the effects of the drying process are used. The actual process, as described by Mr. Wallace, consists of cutting up the compressed yeast into very small pieces in a machine very like a big meat grinder, and then drying it in another machine in a cylinder which revolves much like an elongated cement mixer. Air flow, humidity and temperature are controlled, and the yeast emerges from the machine as granular dried yeast. It is then packaged in cans or envelopes.

5. Production in Canada

Table 2, taken from the Statement of Evidence, is based upon figures supplied by yeast manufacturers to the Dominion Bureau

of Statistics. It shows the total quantity and value of shipments of yeast made by all firms in the industry for the years 1938, and 1945 to 1955 both inclusive. Corresponding figures for the years 1956 and 1957, based on sales information supplied to the Commission by the manufacturers, have been added.

Table 2

QUANTITY AND VALUE OF PRODUCTION OR SHIPMENTS OF YEAST, Canada, 1938 and 1945-1957

YEAR	YEAST, DRIED Production (Lbs)	YEAST, DRIED Selling Value $	YEAST, FRESH Production (Lbs)	YEAST, FRESH Selling Value $
1938	2, 423, 492	465, 608	11, 917, 732	2, 414, 625
1945	1, 415, 257	604, 851	18, 666, 009	3, 643, 458
1946	1, 184, 112	844, 676	20, 271, 915	3, 896, 471
1947	1, 057, 152	1, 084, 196	20, 094, 250	3, 885, 660
1948	1, 064, 294	1, 478, 862	21, 802, 458	3, 442, 234
1949	1, 051, 015	1, 829, 124	21, 814, 396	3, 148, 270
1950	1, 126, 459	1, 938, 514	22, 011, 857	3, 304, 818
1951	1, 219, 562	2, 082, 913	23, 389, 075	3, 568, 824
1952	1, 176, 310	1, 881, 238	24, 826, 852	3, 986, 751
	Shipments		Shipments	
1952	1, 113, 230		24, 843, 753	
1953	1, 163, 604	1, 975, 932	25, 110, 267	4, 122, 237
1954	1, 253, 638	2, 184, 539	25, 622, 483	4, 384, 098
1955	1, 228, 458	2, 366, 361	26, 970, 145	5, 036, 700
1956	1, 263, 741*	2, 497, 550	27, 007, 553*	5, 375, 129
1957	1, 293, 616*	2, 662, 208	27, 593, 611*	5, 665, 651

* Sales

Note: Beginning in 1952, the Bureau changed the basis of its statistics on the production of certain manufactured goods. Firms in industries where year-end inventories were known to be insignificant, were asked to report shipments f.o.b. plant, in place of the gross value of production. In the case of yeast, the difference between the two bases of measurement is very small, as is indicated by the data for 1952. Similarly, the difference between figures for shipments and those for sales must be very small.

Source: For 1938, Dominion Bureau of Statistics - The Manufacturing Industries of Canada, 1938. Totals for other years except 1956 and 1957 are based on individual Returns made to the Dominion Bureau of Statistics. Totals for 1956 and 1957 are based on sales figures supplied to the Commission by the manufacturers.

6. Exports and Imports

Exports of yeast from Canada constitute a very small proportion of total production. Table 3 presents the export figures for the years 1950 and 1952 to 1957:

Table 3

EXPORTS OF YEAST FROM CANADA
1950, and 1952-1957

		Canadian Produce	Foreign Produce
1950	Lb.	477, 205	40
	$	54, 993	88
1952	Lb.	328, 679	-
	$	48, 090	-
1953	Lb.	218, 003	-
	$	41, 950	-
1954	Lb.	201, 071	21, 967
	$	30, 996	6, 517
1955	Lb.	133, 083	770
	$	46, 499	362
1956	Lb.	112, 232	1, 000
	$	48, 064	560
1957	Lb.	160, 158	3, 587
	$	63, 281	1, 935

Source: D.B.S., Trade of Canada

As a percentage of total output, exports fluctuated from a high of 2.06 per cent in 1950 to less than 1 per cent in recent years.

The Statement of Evidence contains the following comment on exports of yeast:

> "30. The United States is the chief export market. In 1954, for example, that Country took about eighty per cent of total yeast exports by weight, and about fifty per cent by value. In other years, the share of the United States has risen to as high as seventy-five per cent, by value, of total exports. Other principal buyers of Canadian yeast are the West Indies and Japan. In general, there has been a steady decline in both the volume and the value of exports over the past few years."

Imports are also of very limited significance in the Canadian market for yeast. Table 4 gives data on imports for the period 1950 and 1952 to 1957:

Table 4

IMPORTS OF YEAST, 1950, and 1952-1957

Year	Country of Origin		Yeast Cakes and Compressed Yeast in Packages Weighing less than 50 lbs.	Yeast Compressed in Bulk or Mass of not less than 50 lbs.
1950	U.S.A.	Lb.	2,273	189,785
"	"	$	2,048	33,743
1952	U.S.A.	Lb.	4,789	221,458
"	"	$	2,800	35,382
1953	U.K.	Lb.	144	
"	"	$	171	
"	U.S.A.	Lb.	1,864	187,856
"	"	$	2,020	34,161
1954	U.S.A.	Lb.	3,869	41,710
"	"	$	3,725	13,800
1955	Italy	Lb.	953	
"	"	$	350	
"	U.S.A.	Lb.	6,485	18,109
"	"	$	4,627	7,199
1956	U.K.	Lb.	104,200	
"	"	$	8,210	
"	Italy	Lb.	1,540	
"	"	$	617	
"	U.S.A.	Lb.	14,460	19,083
"	"	$	8,696	8,111
1957	U.K.	Lb.	160,425	
"	"	$	12,465	
"	Italy	Lb.	1,206	
"	"	$	520	
"	U.S.A.	Lb.	23,754	32,646
"	"	$	15,513	9,470

Source: D.B.S., Trade of Canada

Imports of Yeast, in many years, have come exclusively from the United States and their total value does not exceed $40, 000 in any year shown in the table. In the last two years there have been some imports from the United Kingdom as well as from the United States. Very small amounts have also come from Italy in the last three years.

The following paragraphs relating to imports and rates of customs duties appear in the Statement of Evidence:

"32. Imported supplies, coming almost exclusively from the United States, have fluctuated between .83 per cent and .17 per cent of domestic output. After remaining steady at the $35, 000 to $38, 000 level for a few years, imports dropped by more than fifty per cent in 1954. The importation of yeast is covered by three tariff items, as follows:

36. Compressed yeast, in bulk or mass of not less than fifty pounds - per pound

British Preferential Tariff	- Free
Most Favoured Nation Tariff	- 2 1/2 Cents
General Tariff	- 3 Cents

37. Compressed yeast, in packages weighing less than fifty pounds, the weight of the package to be included in the weight for duty - per pound

British Preferential Tariff	- Free
Most Favoured Nation Tariff	- 5 Cents
General Tariff	- 6 Cents

38. Yeast cakes, the weight of the package to be included in the weight for duty - per pound

British Preferential Tariff	- Free
Most Favoured Nation Tariff	- 5 Cents
General Tariff	- 6 Cents

33. In the few years prior to 1954 which are covered by the above statistics on imports, over ninety per cent, by value, of imports came in under Tariff Item 36; in 1954, this figure fell to about seventy-nine per cent. All imports under this Item for the years covered were dutiable. At the relatively low rates in force for Item 36, the figures on duty collected as a percentage of the value of imports were:

1954 - 7.5%
1953 - 13.8%
1952 - 15.6%
1950 - 14.1%

34. At the somewhat higher rates in force for imports under Item 37, the figures on duty collected as a percentage of the value of imports are set out below. With the exception of a small volume of imports in 1953 which entered duty free, all imports under this Item for the years covered were dutiable:

1954 - 5.2%
1953 - 4.2% (on total imports)
- 4.6% (on dutiable imports)
1952 - 8.5%
1950 - 5.6%"

CHAPTER III

ACQUISITION OF BEST YEAST, LIMITED BY STANDARD BRANDS LIMITED

The year 1955 was not the first occasion on which the possibility of acquiring Best Yeast, Limited had been brought to the attention of Standard Brands Limited, or rather of its parent company, Standard Brands Incorporated. Mr. Wallace stated in evidence that as far back as the 1930's Standard Brands Incorporated was approached by Mr. Winthrop Taylor, a lawyer practising in New York, who controlled Best Yeast, with a view to learning if Standard Brands was interested in buying the Best Company.[1] On several subsequent occasions prior to 1954 similar approaches were made by Mr. Taylor, but on each occasion the answer was no. The discussions never proceeded far enough for a price to be mentioned. Mr. Wallace was not himself a party to any of these discussions.

Then late in 1954 Mr. Taylor again approached Standard Brands Incorporated. Mr. Wallace was consulted and gave his opinion that more consideration should be given to the matter than in the past, for two reasons: first, that increasing production was putting a strain on the Ville LaSalle plant and second, that rising freight and express costs were affecting the company's business operations in areas distant from the factory. His evidence was that for several years the question of increasing productive capacity had been under study and that within the next twelve months expenditures of from $350,000 to $450,000 would have been required at Ville LaSalle to relieve pressure, and that even those expenditures would not provide for the long-term expansion of the company. Further, spreading the company's manufacturing plants to locations strategically located for distribution of its products would be advantageous. In Mr. Wallace's evidence these factors were the sole basis for the acquisition.

The parent company then negotiated with Mr. Taylor and settled the terms of acquisition. Standard Brands wished to buy the assets of Best Yeast, but Mr. Taylor would only agree to a sale of stock, which was the method adopted.

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(1) Best Yeast was incorporated on January 31, 1935.

International Patent Company Limited was the owner of 17,510 common shares and 4,013 preferred shares of Best Yeast, these shares constituting its only assets of any consequence. On January 18, 1955 an agreement was entered into between:

> "Messrs. Winthrop Taylor; J.H. Mowbray Jones; Sydney S. Breese and The First National Bank of Southampton, Substituted Trustees under Will of James L. Breese, deceased; Barbara M. (Patey) Breese; Arthur A. Schmon; Neal D. Becke Gilbert W. Roberts and George B. Lucas and such other owners of International Patent Company Limited, a Nova Scotia Corporation, (hereinafter called 'International') and such owners of common shares of Best Yeast, Limited, a Nova Scotia corporation, (hereinafter called the 'Company') as may become parties hereto as provided herein (all such persons being hereinafter called 'Sellers') and Standard Brands Limited, a corporation organized under the laws of the Dominion of Canada (hereinafter called the 'Buyer')."

The Agreement provided for the purchase of the shares of International Patent Company Limited at the price of $270 per share, and for the purchase of all common shares of Best Yeast not held by International Patent Company Limited at $20 per share. The sellers agreed not to compete with Standard Brands or Best Yeast in respect of the manufacture and sale of yeast in Canada for a period of fifteen years.

At that time the capital of International Patent Company Limited consisted of 1,500 issued shares of common stock, so that the price to be paid under the agreement for all its shares, thereby in effect acquiring full ownership of the shares that company owned of Best Yeast, was 1,500 x $270 = $405,000. Mr. Wallace stated that the intention was to acquire Best common shares at $20.00 per share and Best preferred shares at $10.00 per share (the par value) plus accumulated dividends (covering a period of four years, seven months) of $2.75 per share. If all the Best shares held by International Patent Company Limited had been purchased directly on this basis, instead of indirectly through the purchase of all the shares of International Patent Company Limited, the price would have been as follows:

17,510 common shares at $20.00	- $350,200.00
4,013 preferred shares at $10.00	- 40,130.00
Accumulated dividends on 4,013 preferred shares at $2.75	- 11,035.75
Total	401,365.75

It thus appears that the price paid for the International Patent Company's shares, $405, 000, exceeded what would have been paid if its holdings of Best shares had been bought directly by only $3, 634.25. It should be noted further that by its balance sheet dated June 30, 1954 International Patent Company Limited had on hand $2, 606.44 in cash, in addition to its shares of Best Yeast, Limited, with no liabilities other than that for its issued capital stock. The agreement of January 18, 1955 was worded to ensure that the net worth of International Patent Company Limited should not be less on the closing date for the acquisition than it was on June 30, 1954. Therefore, Standard Brands would obtain the cash as well as the Best shares on completion of the transaction, and the difference in price mentioned above, $3, 634.25, should be reduced by the amount of the cash, $2, 606.44, leaving a difference of only $1, 037.81. On this basis it is clear that the price paid for the purpose of acquiring the Best shares held by International Patent Company Limited differed very little from the price paid under the agreement to obtain the balance of the Best Company's shares directly from the remaining shareholders.

Pursuant to the agreement of January 18, 1955 Standard Brands purchased all the issued and outstanding shares of International Patent Company Limited on April 21, 1955. On August 24, 1955 all the Best Company shares held by International Patent Company Limited were transferred to Standard Brands Limited. All the remaining common shares of Best Yeast, Limited, 12, 181, were acquired by Standard Brands Limited on August 21, 1955, at the agreed price of $20.00 per share, or $243, 620. The cash cost of the acquisition was thus $648, 620, and there were 15, 987 preferred shares of Best Yeast, Limited still outstanding. The Statement of Evidence records that these shares were dealt with as follows:

> "46. By Amendment to the Memorandum of Association, dated August 29, 1955, the capital stock of Best Yeast, Limited, was increased by the creation of 10, 000 additional shares without nominal or par value, all of which were taken up by Standard Brands and the proceeds used to redeem all of the outstanding preference shares. Arrears of dividends on the outstanding preference shares were also paid."

It thus appears that the total final cost of acquiring Best Yeast may be computed as follows:

Paid for all issued shares of International Patent Company Limited, thereby obtaining 4, 013 preferred and 17, 510 common shares of Best Yeast -	$405, 000.00
Paid for balance of issued common shares of Best Yeast - 12, 181 shares at $20.00 -	243, 620.00
Required for dividend arrears on 15, 987 preferred shares of Best Yeast, being those not acquired in connection with the International Patent Company share purchase - at $2.75 per share -	43, 964.25
Required to redeem said 15, 987 preferred shares of Best Yeast at $10.00 per share	159, 870.00
Total cost	$852, 454.25

The Statement of Evidence analyzed the transaction in a manner from which an inference might be drawn that the price paid was excessive, an inference objected to by counsel for Standard Brands, who contended that the price paid was substantially less than the fair appraised value of the company's assets. The difference between the Director and counsel for Standard Brands arises out of the totally different methods employed to arrive at the value of the Best Company's fixed assets, consisting of buildings, plant and equipment, furniture and fixtures. The Director took his figures from the financial statements of Best Yeast, which reflected a depreciation policy of writing off buildings at the rate of five per cent per annum, and plant, equipment, furniture and fixtures at the rate of 20 per cent per annum, of the depreciated value. The following figures are found in one of these financial statements under the heading - Best Yeast, Limited, Fixed Assets and Depreciation - January 1, 1955:

	Cost	Reserve	Net Book Value
Liverpool:			
Buildings	$106,011.54	$ 38,142.50	$ 67,869.04
Plant & Equipment	138,549.44	107,347.44	31,202.00
Furniture & Fixtures	20,880.99	15,381.42	5,499.57
TOTAL	$265,441.97	$160,871.36	$104,570.61
Thorold:			
Buildings	$ 53,526.20	$ 21,183.51	$ 32,342.69
Plant & Equipment	203,831.41	170,242.79	33,588.69
Furniture & Fixtures	9,228.48	6,558.10	2,670.38
TOTAL	$266,586.16	$197,984.40	$ 68,601.76
TOTAL:	$532,028.13	$358,855.76	$173,172.37

The Director then noted that as at January 1, 1955, the balance sheet of Best Yeast showed the net worth of the Company to be $477,890.05, this figure not taking into account any liability in respect of shares. In arriving at this net worth figure of $477,890.05 the balance sheet included the above fixed assets at the net book value of $173,172.37.

Mr. Norlin, a witness called on behalf of Standard Brands Limited, and who made an appraisal of the Best Company's plants, as discussed below, was questioned concerning this figure of $173,172.37:

> "Q. . . . Are you prepared to express a view as to whether $173,000 odd represents anything like the actual real value of those two plants?
>
> A. The book value, sir, is for one purpose, where, according to law, you write off the reserve, but for financial purposes, your actual value of the plant as a going concern is a different thing and must be a higher value."

(Hearing, pp. 71-2)

And again:

> "A. . . . The fair market value, in my opinion, will always be higher than the book value. They are two different things. I would say the fair market value is back of your financing where the book values are for your taxes."

(Hearing, p. 72)

Mr. Norlin and Mr. Simpson gave evidence at the hearing before the Commission as to the value of the buildings, plant and equipment, furniture and fixtures of Best Yeast acquired by Standard Brands Limited. As previously noted, Mr. Norlin is a senior member of an independent firm of consulting engineers and Mr. Simpson is manager of the Capital Assets Department of Standard Brands Incorporated, U.S.A.

Mr. Simpson's duties with Standard Brands Incorporated include appraisals of the property of the company and its subsidiaries, including property of Standard Brands Limited, and the maintaining of the capital asset records of the company. Beginning in May, 1955 he made an appraisal of the properties of Best Yeast in Liverpool and Thorold, which had just been acquired by Standard Brands Limited. This was a routine operation for his department, one of its chief purposes being to establish the value of the various items of property for insurance purposes. Mr. Simpson stated that in fact insurance was placed in accordance with the values found by his appraisal.

Mr. Norlin, himself, and his firm have had wide experience in appraising industrial plants and equipment, chiefly for the purpose of industrial financing. On October 31, 1957 at the request of Standard Brands, his firm began an appraisal under his direction of the two plants at Liverpool and Thorold in order to establish what in their opinion was the fair market value as of March 31, 1955. Mr. Simpson's appraisal had been designed to establish the sound value or fair cash value as of April 1, 1955. Mr. Norlin was not informed as to the purpose of the survey, but proceeded as with an appraisal to establish a value for financing purposes.

The appraisal made in 1955 by Mr. Simpson and his staff and the appraisal made in 1957 by Mr. Norlin and his staff differed to some extent in property classification and procedural detail. Fundamentally, however, their methods were the same. They both began by estimating carefully the reproductive cost new as of March 31 or April 1, 1955 of each item to be valued. Then, by visual observation and inspection of each item, they established a percentage depreciation for it which they felt gave a true picture of its remaining capital value. The comprehensive records submitted to the Commission indicate that both valuations were made in a thorough painstaking manner, with careful attention to detail.

Reproductive costs new in April 1955 naturally gave a higher figure than the actual historic costs shown in the Best Company's own financial statements, which gave the cost of the items at the dates of their original acquisition, which in some instances was the time the plants were first equipped. Again, the total depreciation, percentagewise, arrived at in this way, was much less than the depreciation charged in the Best Company's books.

Mr. Simpson's appraisal produced the following total figures for the assets at the two plants.

	Reproductive Value New $	Sound Value $
Liverpool	555, 330	404, 091
Thorold	453, 877	328, 716
Total	1, 009, 207	732, 807

(Exhibits H-1 and H-2
Hearing pp. 20 and 25)

Mr. Norlin's appraisal produced somewhat higher total figures.

	Replacement Value (reproductive value new) $	Depreciated Value (fair market value) $
Liverpool	621, 066	475, 044
Thorold	490, 964	356, 561
Total	1, 112, 030	831, 605

Mr. Norlin's figures included his appraisal of automobiles and trucks, which had not been appraised by Mr. Simpson. Mr. Norlin's figures should be reduced accordingly, so that the two appraisals will represent the same assets.

Automobiles and trucks

	Replacement Value $	Depreciated Value $
Liverpool	54, 504	42, 206
Thorold	27, 686	19, 758
Total	82, 190	61, 964

Deducting these totals for automobiles and trucks from those given above we obtain the following result:

	Total Replacement Value	Total Depreciated Value
	$	$
	1, 112, 030	831, 605
Less automobiles and trucks	82, 190	61, 964
Balance	1, 029, 840	769, 641

(Exhibits H-5 and H-6, Hearing pp. 46, 67-70)

In the results, for the total property valued in the Best Company's books at $173, 172.37, Mr. Simpson's appraisal showed a "sound" or "fair cash" value of $732, 807.00, and Mr. Norlin's appraisal produced a "fair" value of $769, 641. As mentioned above, Mr. Norlin's survey also appraised the value of trucks and automobiles acquired with the Best Company, arriving at a figure of $61, 964. Automobiles and trucks had not been included in the Best Company's net book figure of $173, 172.37, but were shown separately in the company's financial statement as of January 1, 1955 at $42, 361.04.

We can now compare the three valuations:

	Best Company's net book Value, as of January 1, 1955	Mr. Simpson's Appraisal as of April 1, 1955	Mr. Norlin's Appraisal as of March 31, 1955
	$	$	$
Depreciating fixed assets (excluding automobiles and trucks)	173, 172.37	732, 807.00	769, 641.00
Automobiles and trucks	42, 361.04	not valued	61, 964.00
Total	215, 533.41	732, 807.00	831, 605.00

It is obvious that Mr. Simpson's and Mr. Norlin's appraisals produced total valuations that are reasonably close to each other, but that they are both greatly in excess of the Best Company's net book value. Mr. Simpson's figures are slightly less favourable than those of Mr. Norlin to the argument of Standard Brands' counsel.

We have seen that the balance sheet of Best Yeast as of January 1, 1955 shows a net worth of $477,890.05, taking into account the other assets of the company in addition to the depreciating assets we have been discussing, and also allowing for liabilities other than for shares of the company. In order to arrive at the Best Company's net worth on the basis of Mr. Simpson's appraisal of depreciating fixed assets we must substitute his figure of $732,807.00 for that of $173,172.37 in the balance sheet. In other words the company's net worth is found by adding Mr. Simpson's figure of $732,807.00 to the difference between $477,890.05 and $173,172.37, which is $304,717.68. The total net worth thus appears to be:

	$304,717.68
plus	732,807.00
	$1,037,524.68

On Mr. Simpson's appraisal this figure represents the value obtained by Standard Brands when it acquired Best Yeast at a total cost of $852,454.25. Of course, Mr. Norlin's appraisal would produce a higher total net worth for the Best Company than Mr. Simpson's.

The Commission is of the opinion that appraisals of physical property made in the specific detailed manner followed by Mr. Simpson and Mr. Norlin, by persons who on the evidence are highly qualified to perform such work, and about whose motives or integrity there is no reason for doubt, are much more likely to produce an approximate fair market value than the arbitrary method shown in the Best Company's books. Counsel for the Director drew attention to several possibilities of error of detail in the method of appraisal adopted by Mr. Simpson and Mr. Norlin, but on the evidence the Commission considers that any adjustment that might be occasioned thereby would have only minor effect upon the total valuation figures. Therefore, since the lower of the two appraisals, that of Mr. Simpson, shows a total net worth for the Best Company that is considerably higher than the total amount required for full acquisition ($185,070.43 or 21.71% higher), the Commission considers that Standard Brands did not pay an excessive price to acquire Best Yeast, if, as the evidence indicates, Standard Brands would have had to acquire properties of somewhat the same kind in any event.

It is true that Mr. Simpson's and Mr. Norlin's appraisals were both made after the contract of purchase was entered into and therefore neither can have had any influence on the contract price. Mr. Wallace did state that prior to the acquisition he, together with the vice-president in charge of production and the secretary-treasurer of the company, inspected the Liverpool plant and that he had the Thorold plant inspected by the plant manager and yeast technician of Standard Brands' Ville LaSalle plant. Apparently no appraisal of the plants was made prior to the acquisition other than a rough valuation made on the occasion of the above inspections. Mr. Wallace could not remember the exact date of the inspection of the plants (Hearing, pp. 146-7, 195-7). Mr. Wallace also stated that he had access to the schedules of fire insurance policies on the Best Company's property and relied on them as indicating in part the value Standard Brands was acquiring in purchasing the Best Company (Hearing, p. 166). These schedules were annexed to the contract of purchase, and show \$550, 000 of fire insurance on the Liverpool plant, equipment and inventories, with a 90% co-insurance clause and \$450, 000 on the Thorold plant (Serials 108 and 110). Best Yeast's balance sheet of January 1, 1955 shows the value of the company's inventories as \$70, 184.19.

On the basis of all the evidence before the Commission we are unable to say that Standard Brands Limited did not negotiate and seek to acquire Best Yeast, Limited at the lowest possible price.

Counsel for the Director advanced a further argument, that in appraising the assets of Best Yeast, regard should have been had to the earning power of those assets. This argument will be considered later in this report, in discussing the profit and loss record of the Best Company.

Best Yeast, Limited has not been wound up but its business has been completely integrated with that of Standard Brands Limited. The Liverpool plant of Best Yeast, Limited has been adapted to use molasses instead of sulphite liquor and sulphite liquor is no longer used in any yeast plant in Canada. Fleischmann's yeast (Standard Brand's yeast) is now being manufactured at the Best Company's plant at Liverpool and Best dried yeast is now being manufactured at Standard Brands' Ville LaSalle plant. The Thorold plant now makes only fresh bakers' yeast under the Best label. Sale and distribution of the products of the two companies are also handled as an integrated operation. Wherever, in this report, reference is made to sales of Best Yeast subsequent to the merger, the reference is to yeast sold under the Best label, not to all yeast made at the Liverpool and Thorold plants.

CHAPTER IV

ADDITIONAL FACTORS CONSIDERED IN THE INQUIRY

1. Relative Market Position of Yeast Companies Prior to the Acquisition

At all times relevant to this inquiry Standard Brands has held a great deal more than half of the yeast market in Canada, for both fresh and dried yeast. This is clear from Tables 5, 6 and 7, which are taken from the Statement of Evidence and were compiled from returns made by Standard Brands, Best Yeast and Lallemand or its predecessor to the Dominion Bureau of Statistics for the years 1945-55, both inclusive. Sales figures for the years 1956 and 1957, obtained from the companies since the hearing, have been included in the tables. The Commission considers that figures for sales cannot differ significantly from those for shipments of yeast.

Table 5

STANDARD BRANDS - Total

Production of Yeast

YEAR	DRIED YEAST Quantity	DRIED YEAST % of Industry Total	DRIED YEAST Value	FRESH YEAST Quantity	FRESH YEAST % of Industry Total	FRESH YEAST Value
	Pounds		Dollars	Pounds		Dollars
1945	1, 294, 271	91.45	533, 360	12, 762, 148	68.37	2, 776, 637
1946	1, 014, 538	85.69	698, 862	13, 722, 251	67.69	2, 913, 164
1947	853, 371	80.73	873, 399	14, 202, 343	70.68	2, 986, 204
1948	851, 269	79.99	1, 255, 865	15, 824, 709	72.59	2, 550, 865
1949	863, 210	82.13	1, 600, 846	15, 550, 399	71.28	2, 260, 500
1950	909, 430	80.73	1, 688, 228	15, 857, 779	72.04	2, 489, 192
1951	978, 905	80.27	1, 834, 212	16, 718, 299	71.48	2, 647, 756
1952	1, 002, 268		(Prdn)	17, 191, 972		(Prdn)
1952	927, 083	83.28	1, 690, 886 (Shpt)	17, 197, 399	69.22	2, 862, 570 (Shpt)
1953	1, 084, 091		(Prdn)	17, 128, 558		(Prdn)
1953	1, 013, 388	87.09	1, 807, 757 (Shpt)	17, 288, 237	68.85	2, 826, 311 (Shpt)
1954	1, 088, 820	86.85	2, 010, 395 (Shpt)	17, 798, 533	69.46	2, 917, 798 (Shpt)
1955	1, 063, 006	86.53	2, 184, 086 (Shpt)	19, 015, 774	70.51	3, 529, 369 (Shpt)
1956	1, 105, 918	87.51	2, 293, 677 (Sales)	19, 165, 577	70.96	3, 751, 125 (Sales)
1957	1, 162, 814	89.89	2, 463, 005* (Sales)	19, 520, 124	70.74	3, 969, 360* (Sales)

* The figures supplied by Standard Brands for 1957 gave separately the quantities of each kind of yeast (bakers' fresh, bakers' dried, consumers' fresh and consumers' dried), sold as Fleischmann's yeast and as Best yeast, but gave the selling values only as totals for the two companies. For this table the selling values for each company have been computed on the basis of their respective quantity sales. The Commission does not consider the slight variations in the price of bakers' yeast as between Fleischmann's yeast and Best yeast to be of material significance.

Source: D.B.S., 1945-1955

Table 6

BEST YEAST - Total

Production of Yeast

YEAR	DRIED YEAST Quantity	DRIED YEAST % of Industry Total	DRIED YEAST Value		FRESH YEAST Quantity	FRESH YEAST % of Industry Total	FRESH YEAST Value	
	Pounds		Dollars		Pounds		Dollars	
1945	120,986	8.55	71,491		1,925,162	10.31	349,591	
1946	104,750	8.85	70,732		2,072,178	10.22	401,234	
1947	154,060	14.57	152,569		1,875,227	9.33	377,288	
1948	170,430	16.01	173,587		1,856,439	8.51	355,599	
1949	171,835	16.35	209,813		1,853,320	8.50	402,596	
1950	204,527	18.16	235,784		1,847,305	8.39	341,881	
1951	229,069	18.78	235,026		1,947,437	8.33	354,268	
1952	166,084			(Prdn)	2,001,285			(Prdn)
1952	178,189	16.01	181,200	(Shpt)	2,012,759	8.10	391,814	(Shpt)
1953	135,442			(Prdn)	1,986,121			(Prdn)
1953	138,330	11.89	155,100	(Shpt)	1,989,873	7.92	421,102	(Shpt)
1954	140,946	11.24	145,498	(Shpt)	1,970,213	7.69	441,896	(Shpt)
1955	91,662	7.46	115,716	(Shpt)	2,008,176	7.44	492,211	(Shpt)
1956	90,063	7.13	103,936	(Sales)	1,356,988	5.03	408,358	(Sales)
1957	77,072	5.96	113,274*	(Sales)	1,279,912	4.64	397,662*	(Sales)

* The figures supplied by Standard Brands for 1957 gave separately the quantities of each kind of yeast (bakers' fresh, bakers' dried, consumers' fresh and consumers' dried), sold as Fleischmann's yeast and as Best yeast, but gave the selling values only as totals for the two companies. For this table the selling values for each company have been computed on the basis of their respective quantity sales. The Commission does not consider the slight variations in the price of bakers' yeast as between Fleischmann's yeast and Best yeast to be of material significance.

Source: D. B. S., 1945-1955

Table 7

LALLEMAND - Montreal, Quebec

Production of Yeast

YEAR	DRIED YEAST Quantity	DRIED YEAST % of Industry Total	DRIED YEAST Value		FRESH YEAST Quantity	FRESH YEAST % of Industry Total	FRESH YEAST Value	
	Pounds		Dollars		Pounds		Dollars	
1945					3,978,699	21.32	517,230	
1946	64,674	5.46	75,022		4,477,486	22.09	582,073	
1947	49,721	4.70	57,676		4,016,680	19.99	522,168	
1948	42,595	4.00	49,410		4,121,310	18.90	535,770	
1949	15,970	1.52	18,525		4,410,677	20.22	485,174	
1950	12,502	1.11	14,502		4,306,773	19.57	473,745	
1951	11,588	0.95	13,675		4,723,339	20.19	566,800	
1952	7,958			(Prdn)	5,633,595			(Prdn)
1952	7,958	0.71	9,152	(Shpt)	5,633,595	22.68	732,367	(Shpt)
1953	11,886			(Prdn)	5,832,157			(Prdn)
1953	11,886	1.02	13,075	(Shpt)	5,832,157	23.23	874,824	(Shpt)
1954	23,872	1.91	28,646	(Shpt)	5,853,737	22.85	1,024,404	(Shpt)
1955	73,790	6.01	66,559	(Shpt)	5,946,195	22.05	1,015,120	(Shpt)
1956	67,760	5.36	99,937	(Sales)	6,484,988	24.01	1,197,646	(Sales)
1957	53,730	4.15	85,929	(Sales)	6,793,575	24.62	1,298,629	(Sales)

Source: D. B. S., 1945-1955

These tables show that for Canada as a whole during the period prior to the merger in 1955 Standard Brands' production of dried yeast varied from a low point of about 80 per cent to a high of 87.09 per cent (1953), with one year, 1945, going as high as 91.45 per cent of total Canadian dried yeast. Best Yeast's share of dried yeast production in the same period varied from a low point of 7.46 per cent in 1955 to a high of 18.78 per cent in 1951, the years prior to 1951 showing generally an increasing share of the market and the years following 1951 showing a rapid decline in market share. Lallemand's share of dried yeast production in the period varied from a low point of .71 per cent in 1952 to a high of 6.01 per cent in 1955. From 1949 to 1954 it was never as high as 2 per cent.

Standard Brands' production of fresh yeast during this period, as a percentage of total Canadian production, varied only slightly, the low point being 67.69 per cent in 1946 and the high point 72.59 per cent in 1948. Similarly Best Yeast's share of the fresh yeast production varied from a low point of 7.44 per cent in 1955 to a high point of 10.31 per cent in 1945, the whole period showing a slow but steady decline in percentage of total production. Lallemand's share of fresh yeast production varied from a low point of 18.90 per cent in 1948 to a high point of 23.23 per cent in 1953, the last four years of the pre-merger period showing somewhat higher percentages than the earlier years.

A reference back to Table 2 shows a steady growth in the total fresh yeast business since 1945, shipments rising from 18,666,009 pounds in that year to 26,970,145 pounds in 1955. Best Yeast's production poundwise changed very little between 1945 and 1955, with the result that its share of the market for fresh yeast showed the substantial decrease indicated above. Further reference to Table 2 shows that total shipments of dried yeast in 1948 were 1,064,294 pounds, and while shipments have fluctuated since that year the general tendency has been upward, reaching 1,253,638 pounds in 1954 and dropping slightly to 1,228,458 pounds in 1955. Dried yeast shipments of the Best Company, poundwise, increased from 1948 to 1951 quite substantially, from 170,430 pounds to 229,069 pounds, but dropped sharply in 1952 to 166,084 pounds, fell further to 140,946 pounds in 1954 and again sharply to 91,662 pounds in 1955. For this comparison the Commission prefers not to use figures for years prior to 1948, as the old dried yeast cake was then still in use. The old dried yeast cake was much heavier per leavening unit than the newer granulated dried yeast, but was probably less attractive to housewives, who are the major consumers of dried yeast. From the evidence available to us we are unable to evaluate the effect on the market of these divergent factors.

The foregoing statement indicates that for some years prior to its acquisition by Standard Brands, Best Yeast had been losing

ground, percentagewise, to a substantial degree in both categories, fresh and dried yeast, and had also been losing ground substantially in actual production poundwise in the lesser category of dried yeast.

The Best Company's position relative to that of other companies has been stronger in the eastern region of Canada than elsewhere, particularly in respect of fresh consumers' yeast. Information obtained by the Director from questionnaires submitted to and returns made by the three yeast companies gives the data shown in Table 8. Figures for 1957 have been added, derived from information supplied to the Commission by the manufacturers since the hearing.

Table 8

FRESH CONSUMERS' YEAST SALES IN DOLLARS
FOR THE EASTERN REGION OF CANADA

Year	Standard Brands	Best	Lallemand	Total
1950	218,874	237,836	20,381	477,081
percentage of dollar sales	45.88	49.85	4.27	100
1954	232,637	230,859	8,720	472,216
percentage of dollar sales	49.26	48.89	1.85	100
1955	242,308	241,022	2,285	485,615
percentage of dollar sales	49.90	49.63	.47	100
1956	283,858	206,749	nil	490,607
percentage of dollar sales	57.86	42.14		100
1957	316,322	205,403	nil	521,725
percentage of dollar sales	60.63	39.37		100

From this table it is seen that Lallemand held an insignificant share of this market. It may be noted here that in 1955 Lallemand ceased manufacturing fresh consumers' yeast. On the other hand prior to 1956 Best Yeast's share was fully comparable to that of Standard Brands. Only in 1956, the year following the acquisition of Best Yeast by Standard Brands, did Standard Brands gain a substantially larger share of this market than Best Yeast.

One qualification in the use of Table 8 requires to be stated. The eastern region of Canada for which the figures are given

is not identical in area for the three companies. The area for which Standard Brands provided figures comprised the four Maritime Provinces and Quebec. That for which Best Yeast provided figures prior to its acquisition by Standard Brands comprised the Maritimes and Eastern Quebec. For the period after the acquisition in 1955 Standard Brands provided figures for Best Yeast covering the same area as for its own sales. The area for which Lallemand provided figures comprised only the four Maritime Provinces, and the evidence of Mr. Wallace was that Quebec was the area in which Lallemand made most of its sales. As between Standard Brands and Best Yeast the Director regarded the difference in area as not being of much significance, and Mr. Wallace stated that the Maritimes was the only area in which there was a substantial sale of fresh consumers' yeast. It would appear, therefore, that if the figures reported by Standard Brands had been for the smaller area reported by Best Yeast, Best's percentage share of this particular market might have been slightly larger and that of Standard Brands slightly smaller except for the years 1956 and 1957, 1956 being the first full year in which the area was the same for both companies.

2. Other Acquisitions by Standard Brands Limited

In Chapter II there is a brief statement of the amalgamation of companies that took place when Standard Brands Limited was formed, and of acquisitions made subsequently by that company. The original amalgamation in 1929 left as competitors for the new company only Lallemand, which then manufactured only fresh bakers' yeast, and White Star Manufacturing Company Limited, of Winnipeg, which manufactured only dried yeast, chiefly, if not wholly, for household use. This company's name was changed to Western Pure Foods Ltd. in 1930.

Between 1929 and 1955 none of the acquisitions made by Standard Brands Limited except that of Western Pure Foods Ltd. in 1935 were connected with yeast, and in the opinion of the Commission they have no direct bearing on this inquiry. The acquisition of Western Pure Foods Ltd., however, did involve yeast, and the Director attached a good deal of importance to this transaction.

Under the management of Mr. A. B. Flett, who had acquired the company in 1930, Western Pure Foods Ltd. appears to have operated very successfully. Its production and sale of consumers' dried yeast multiplied, and while the major portion of its business was always in Western Canada its geographical market was expanded between 1930 and 1935 to include Ontario, Quebec and the Maritime Provinces. Figures obtained by the Director, partly from the Dominion Bureau of Statistics and partly from Standard Brands, show that its dried yeast production increased from 115,200 pounds in 1929,

having a value of \$19,726, to 669,039 pounds in 1935, having a value of \$137,282, and that in the latter year the company enjoyed 30.71 per cent by weight and 28.81 per cent in dollars of the total dried yeast business in Canada. Following its acquisition by Standard Brands in 1935, its production and sale of yeast declined rapidly and had practically disappeared by 1942.

Mr. Flett stated that between 1930 and 1935 yeast was the largest single item in the company's business, accounting for perhaps 20 per cent of the total, and that it produced a substantial part of the company's profits. In fact in 1934 yeast sales were \$140,765 out of total sales of \$310,704 (Evidence, pp. 10-11).

Mr. Flett further stated that at the time of its sale to Standard Brands the company was earning 35 per cent on invested capital and 17 1/2 per cent on net worth (Evidence, p. 15).

The company's invested capital was \$100,000, but by retention of earnings between 1930 and 1935 Mr. Flett stated its net worth had become \$208,632.18 (Exhibit W-1).

In Mr. Flett's evidence the negotiations for the sale were very brief. He stated that he was approached by Mr. J. W. Horsey, then president of Standard Brands Limited, with a view to buying his company. He described the transaction as follows:

"Q. Was that \$300,000 the initial asking figure?

A. As a matter of fact, let me see, I think that was the original asking figure I placed on it.

Q. Did you communicate that to Mr. Horsey?

A. He called to see me. I said we didn't want to sell, but everything is for sale at a price, and I said \$300,000 is the price and he said, 'O.K., we will take it.'

Q. There was no further negotiation over price?

A. No.

BY THE CHAIRMAN:

Q. It was just like that!

A. That is right."

(Evidence, pp. 14-5)

The transaction was carried out by the sale of all the issued and outstanding shares of the company's capital stock to Standard Brands Limited for $300,000.

Concerning this acquisition counsel for the Director presented the following in the course of his argument:

> " . . .
>
> I do not propose to dwell upon the Western Pure Foods acquisition except to point out that it played a part in establishing the control that Standard Brands now has over the yeast business in Canada and that its purpose, at the time it occurred, was to eliminate a competitor. The evidence of the circumstances surrounding the acquisition, the price paid for the property and the disposition that was made of it strongly indicate that the purpose was the lessening of competition - a purpose which was fulfilled by the disappearance of the competitor.
>
> My purpose in referring to the Western Pure Foods acquisition is to illustrate the method by which Standard Brands has reached the position of substantial or complete control of the yeast industry. . . ."
>
> (Hearing, pp. 228-9)

Counsel regarded the circumstances of the foregoing acquisition, together with the amalgamation of Fleischmann Company of Canada Limited and E. W. Gillett Company Limited which occurred when Standard Brands Limited was formed, as indicating an established pattern of deliberately acquiring competitors and eliminating competition.

The Commission does not consider that a pattern of deliberately acquiring competitors and eliminating competition has been established by the evidence. We agree that the evidence concerning the acquisition of Western Pure Foods Ltd. suggests that in that instance the purpose of Standard Brands may well have been to reduce competition by acquiring a competitor, its only competitor in the dried yeast field. However, no official of Standard Brands was examined prior to the Hearing before the Commission. No explanation of the transaction was offered on behalf of the company at the Hearing, but perhaps the passage of time made an explanation impracticable. In any event, the Commission does not consider that this one example, occurring twenty years before the acquisition of Best Yeast, has strong evidentiary value in relation to the later acquisition.

There is no evidence before the Commission concerning the original amalgamation when Standard Brands Limited was formed, and which included the E. W. Gillett Company Limited, except that of Mr. Wallace, who offered the reasonable explanation that the Canadian amalgamation, forming Standard Brands Limited, followed the same pattern as the parent amalgamation in the United States, and that the inclusion of the Gillett Company, which manufactured yeast, in the Canadian amalgamation, was incidental, arising out of the fact that it was a subsidiary of the Royal Baking Powder Corporation, which did not manufacture yeast but was one of the principals in the amalgamation of the parent companies in the United States. Likewise the only evidence we have as to the purpose of Standard Brands Limited in acquiring Best Yeast in 1955 is that of Mr. Wallace, who stated that over a period of many years Standard Brands Incorporated had been approached on several occasions by Mr. Winthrop Taylor, who controlled Best Yeast, and who wished to interest Standard Brands in acquiring the Best Company, but that these approaches were all rejected until late in 1954 when Mr. Taylor made a further approach. On that occasion Standard Brands Limited, because of expanding business and taking a long view of its need for greater productive capacity, became definitely interested in acquiring the offered plants. Some support for Mr. Wallace's evidence is found in the following facts:

(a) The Thorold plant of Best Yeast had operated at a loss in every year from 1940, when it commenced to make yeast, down to 1955, except for the four years 1948 to 1951.

(b) While on January 1, 1955 the Best Company was carrying on its books an earned surplus of $78,000, it had never paid a dividend on its common shares and on that date was more than four years in arrears in payment of dividends on its preferred shares.

(c) For several years prior to 1955 the Best Company had been losing ground percentagewise in its share of the Canadian yeast market, and though its production of fresh yeast had been maintained with little variation in annual production in pounds, its production of dried yeast in those years had dropped rapidly.

In addition to these facts the Commission finds, on the evidence of Mr. Simpson and Mr. Norlin, who, independently of each other, conducted two separate thoroughgoing appraisals of the assets of Best Yeast after the date of the acquisition, that Standard Brands did not pay an excessive price to acquire the company. The Commission is satisfied on the evidence that Mr. Simpson and Mr. Norlin are fully competent to make appraisals of this character and sees no reason to doubt that their valuations were made fairly and honestly, on the basis that the plants were going concerns.

3. The Price of Yeast

An examination of Table 2 enables us to ascertain what fluctuations have occurred in the price charged by the manufacturer, per pound of yeast, since 1938. Fresh yeast has remained essentially the same product throughout this period. Taking selected years from the table as fairly representative, we find the following variations in the average price of fresh yeast:

Year	Shipments	Selling Value	Price per Pound
1938	11,917,732 lb.	$2,414,625	20.26¢
1945	18,666,009	3,643,458	19.52
1948	21,802,458	3,442,234	15.79
1949	21,814,396	3,148,270	14.43
1954	25,622,483	4,384,098	17.11
1955	26,970,145	5,036,700	18.67

From these figures we see that the price of fresh yeast dropped from 20.26¢ per pound in 1938 to a low of 14.43¢ in 1949. By 1954 it had risen to 17.11¢ and in 1955 it had become 18.67¢, still well below the 1938 price.

For dried yeast, taking the same years, we find the following variations in average price:

Year	Shipments	Selling Value	Price per Pound
1938	2,423,492 lb.	$ 465,608	19.21¢
1945	1,415,257	604,851	42.74
1948	1,064,294	1,478,862	$ 1.39
1949	1,051,015	1,829,124	1.74
1954	1,253,638	2,184,539	1.74
1955	1,228,458	2,366,361	1.93

The Commission is unable to compare the price per pound in 1938 with that of the later years shown. It will be remembered that in 1944 the much better and much lighter granular dried yeast began to be introduced and that in 1948 it had completely replaced the old dried yeast cake. The evidence is not completely clear but it would appear that 1948 was the first year in which none of the old dried yeast cakes were produced in Canada. In that year the average price was $1.39 per pound. It was $1.74 in 1949, was also $1.74 in 1954 and had risen to $1.93 in 1955.

Exhibit H-14, filed at the hearing on behalf of Standard Brands Limited, contains additional information concerning the prices charged by that company over the years, based, however, on net sales returns rather than on selling price per unit. This basis takes into account the 5 per cent or 6 per cent of overage consumers' yeast that the company picks up to destroy and replaces free of charge. For fresh bakers' yeast the price trends are similar though not so pronounced as those derived from the D. B. S. figures in Table 2, except that this exhibit shows a very slight decrease in price for this company from 1954 to 1955, instead of the increase noted in Table 2 for the industry as a whole. For dried consumers' yeast the increase in price from 1948 to 1955 is very similar to that derived from Table 2. The exhibit also lists separately the price changes in fresh consumers' yeast cakes. Here the trend from 1938 to 1955 has been upward, reaching a point in the later years about one-third above the price in the earlier years. It may be noted that in 1932 the one-half ounce fresh consumers' yeast cake was in use, the two-third ounce cake being introduced in 1933 and the one ounce cake in 1941, but it appears that no change in price per cake was associated with either of these increases in the size of the cake. The only substantial increase in price of this company's consumers' fresh yeast cake prior to 1956 occurred in 1949 when the price jumped from 3. 1 cents per cake to 3. 97 cents per cake.

Exhibit H-14 provides some further information as to the price relationship between the old dried yeast cake and the newer dried granular yeast packaged in envelopes. The newer form is definitely more expensive. During the years 1944 to 1947, when they were both on the market, the price of the old dried cake was slightly over one cent while the price of the new granular yeast was about 2. 5 cents per envelope. It must be recognized, of course, that this price comparison is not a comparison of similar things, for while the old dried yeast cake and the newer granular dried yeast in the envelope were each designed to be a leavening agent for four loaves of bread, there are eight grams of yeast in the envelope as against one in the cake, and the granular yeast is a much better and faster-working leavening agent.

In regard to the prices charged by the three manufacturing companies, the Statement of Evidence contains the following comments:

> "107. Although prior to the merger there were only three competitors in the yeast industry, with one being substantially larger than the other two, the price structure of the industry seems to have been characterized by a relatively stable system of differentials rather than by rigid uniformity dependent upon the leadership of the dominant firm. Information concerning selling prices of yeast furnished by the three Companies, both informally and by way of Return under section 9 of the Combines

Investigation Act, indicates that in fresh bakers' yeast, having regard to the differences in the size of quantity brackets as between Standard Brands and Best Yeast, the latter's prices tended to be slightly lower except in the largest quantities. Since the merger, while Standard Brands' quantity brackets have been adopted by Best Yeast (except in Quebec), a similar price differential has been maintained. Lallemand's prices tend, by and large, to be the same as Best Yeast's.

108. In the case of dried consumers' yeast, Best Yeast's prices tended to be slightly below those of Standard Brands. However, on November 21, 1956, the price of Best Yeast's dried yeast was made uniform with Standard Brands. Lallemand has tended to follow Best Yeast's price on this item as well, although it did not advance its price on November 21, 1956.

109. Best Yeast's prices for dried bakers' yeast also tended to be somewhat lower than Standard Brands, except on the one-hundred-pound drum, on which prices were identical. Since the merger, the same sort of differential has existed and the packaging sizes have been made uniform as between the two Companies.

110. Prices of fresh consumers' yeast have been and are identical as between Standard Brands and Best Yeast."

It will be noted that the only category in which the Statement of Evidence states that any change has occurred in the price relationship between the manufacturers since the acquisition of the Best Company by Standard Brands is that of dried consumers' yeast. Mr. Wallace was questioned on this point. He said that the Best Yeast Company gave small discounts to jobbers, whereas Standard Brands sold on a net price basis, which accounted for the difference. After the acquisition Standard Brands eliminated these small discounts, making the price uniform on a net price basis (Hearing, p. 138). Other evidence of Mr. Wallace was to the effect that the quality of the Best Company's yeast had been improved under Standard Brands' management, largely by the use of molasses instead of sulphite liquor, and that the product had become in fact the same as Fleischmann's. He stated further that the price to the housewife of Best yeast had always been exactly the same as that of Fleischmann's. From field reports of his company's sales organization, which was the only source of his information on this point, it was his opinion that the small discounts that had been allowed by the Best Company to the jobber were all retained by the latter and not passed on to the retail grocer.

Mr. Wallace was questioned concerning the reason for the Best Company giving small discounts to jobbers:

"Q. Can you tell me this: Would a jobber or a grocer require any inducement to handle the Best Yeast product as opposed to Standard Brands product?

A. I would say so. I would say that he would have a little more difficulty in handling a product that was what we consider inferior in quality to our own product, and he would have to be compensated in some way to put the extra effort that was necessary behind the other product to sell it."

(Hearing, p. 138)

There is no evidence of any pre-merger arrangements between the yeast manufacturers concerning prices. Standard Brands may have been a price leader, but if so we cannot say that its leadership sprang either from agreement or from Standard Brands having power to control prices effectively. The total absence of evidence on these points suggests that there was no pre-merger planning of a monopolistic kind by Standard Brands, a conclusion in accord with other evidence concerning various phases of the merger.

4. Sulphite Liquor

The Statement of Evidence attached some importance to the use of waste sulphite liquor from paper-pulp manufacture as a growth medium for yeast. It stated that waste sulphite liquor from spruce wood contains 2 to 2 1/2 per cent sugars, and that when phosphate, nitrogen and certain organic compounds known as growth substances are added, it contains all the necessary materials for yeast growth.

Using Swedish patents the first sulphite liquor yeast plant was built in Finland in 1928. The second such plant in the world was that of Best Yeast, built at Liverpool, Nova Scotia, in 1935, based on the same process and using liquor from the plant of the Mersey Paper Co., Limited. Subsequently, when Best Yeast established its plant at Thorold, Ontario in 1940 it began by using sulphite liquor from the nearby plant of Ontario Paper Co. Limited.

Mr. Wallace, in giving evidence, stated that these two plants of Best Yeast are the only sulphite liquor yeast plants in the United States or Canada, that he knew of no others in the western hemisphere, or anywhere else except that there might be some in Norway

or Sweden, and that even as to those countries his information consisted of hearsay (Hearing, p. 186).

As mentioned earlier in this report, some time before the acquisition of Best Yeast by Standard Brands, the Thorold plant had switched from sulphite liquor to molasses. The reason for the change is not known to the Commission, for though the Statement of Evidence states it was due to inability to secure an adequate supply of sulphite liquor, no evidence on the point was brought before the Commission.

It will also be remembered that following the acquisition of Best Yeast the Liverpool plant was changed over to molasses, so that there are no longer any yeast plants in Canada using sulphite liquor.

Mr. Wallace expressed a very strong opinion that sulphite liquor was inferior to molasses in the production of yeast. He said:

> ". . . I can very definitely state that there has never been a consistently good pound of yeast produced in Canada from the sulphite liquor process."
>
> (Hearing, p. 132)

Referring to the Best Company he said the sugar content of the sulphite liquor from the paper mills varied from day to day and that Best Yeast never had really good control over their sulphite liquor. For a month or two fairly satisfactory yeast might be produced from sulphite liquor, then inferior yeast would appear. Further, Best Yeast had never been able to produce a yeast that would stand up satisfactorily for distribution, particularly in warm weather. He stated that the changeover of the Liverpool plant from sulphite liquor to molasses had been made in order to improve the quality of the yeast and definitely not to suppress a more desirable process.

The Commission has seen no evidence in contradiction of that of Mr. Wallace. His evidence gives a sound business reason for abandoning the sulphite liquor process, and the Commission has found nothing in the incident adverse to Standard Brands.

5. The Profit and Loss Record of Best Yeast

The Statement of Evidence gives a summary of the profit and loss history of Best Yeast, in the following table, compiled from financial statements obtained from the company:

Table 9

BEST YEAST, FINANCIAL STATISTICS, 1936-1955

Year Ending	Net Profit Liverpool Plant (Before Taxes) $	Net Profit Thorold Plant (Before Taxes) $	Total Net Profit (After Taxes) $	Tangible Net Worth $	Total Net Profit After Taxes as Percentage of Tangible Net Worth %
June 27, 1936	-36,829.46		-36,829.46		
July 3, 1937	189.77		161.30	67,856.83	.24
July 2, 1938	14,091.71		11,977.95	79,834.78	15.
July 1, 1939	22,567.30		19,105.24	98,715.94	19.35
June 29, 1940	47,563.90	-12,541.02	31,143.87	276,861.42	11.24
June 28, 1941	21,204.05	-23,898.07	-2,694.02		
June 27, 1942	10,865.76	-13,492.09	-2,626.33		
July 3, 1943	21,787.15	-22,617.46	- 830.31		
July 1, 1944	23,498.61	-20,550.42	2,583.89	303,368.98	.85
June 30, 1945	28,574.02	-18,276.56	8,032.02	366,411.00	2.19
June 29, 1946	38,182.86	-13,556.96	14,795.54	372,251.40	3.97
June 28, 1947	20,274.83	-21,721.14	-1,446.31		
Jan. 3, 1948*	10,867.45	-10,287.90	579.55	361,023.77	.16
Jan. 1, 1949	42,363.37	2,916.72	28,946.06	389,509.49	7.43
Dec. 31, 1949	86,120.51	9,468.16	61,573.83	428,075.29	14.38
Dec. 31, 1950	66,483.92	13,673.04	50,650.78	468,151.27	10.81
Dec. 29, 1951	50,966.34	20,849.57	39,461.86	475,881.75	8.29
Jan. 3, 1953	34,984.11	-17,171.34	13,033.76	475,442.99	2.74
Jan. 2, 1954	23,257.11	-20,741.02	1,991.57	471,405.99	.42
Jan. 1, 1955	25,369.92	- 9,620.73	12,555.13	477,890.05	2.62
Dec. 31, 1955			25,722.66	439,612.71	5.85

* Six months only.

Note: In computing tangible net worth, assets such as organizational and development expenses, commissions paid on sale of preferred stock, and patent rights and processes have been excluded in accordance with usual accounting practice.

In computing net income in any year, tax adjustment items for previous years have been excluded, since in some cases they can be traced to a particular year, and in other cases they cannot. In no year are they large enough to make any significant difference to the company's financial position.

It is obvious from this table that the operation of the Thorold plant had been far from successful. Substantial losses were incurred in every year down to 1948 when a profit of $2,916.72, before taxes, was earned. In the next three years, 1949 to 1951, profits increased, reaching a high point of $20,849.57, before taxes, in 1951. However, in the following three years, 1952 to 1954, which was the period immediately prior to the acquisition of the company by Standard Brands, .substantial losses were again incurred.

On the other hand since 1937 the Liverpool plant has earned profits which have varied considerably but have always exceeded $10,000, and which reached a high point of $86,120.51, before taxes, in 1949. In 1950 and 1951 profits dropped but were higher than in any year prior to 1949. Further drops occurred in 1952 and 1953, followed by a slight rise in 1954, when the profit was $25,369.92 before taxes.

Looking at the total net profit picture of the company, after taxes, it is seen that from June 1940 to the end of 1947 profits were never large, and losses were incurred in four years of the period. In 1948 to 1951 the company enjoyed much greater prosperity, 1949 showing a high net profit mark of $61,573.83. In 1951 the net profit was $39,461.86, but it was only $13,033.76 in 1952, $1,991.57 in 1953, and $12,555.13 in 1954. The total for these three years immediately preceding the acquisition was $27,580.46. Leaving common shares out of consideration the dividends accumulating for these three years on preferred shares totalled $36,000.

Clearly the company's record of earnings during the three years prior to the acquisition was not satisfactory from the shareholders' point of view, nor were the facts that no dividends had ever been paid on common shares and that unpaid dividends on preferred shares had been accumulating since June 1, 1950.

In view of this profit and dividend history, and particularly of the deteriorating picture of the years preceding the acquisition, it might well be expected that those controlling the company would be willing to sell. This situation lends some support to Mr. Wallace's evidence that the approach was made by Best Yeast, the seller, not by Standard Brands, the buyer.

On the other hand the profit and loss record of Best Yeast does not indicate that the company was in serious financial difficulties. It would appear that while its position was unsatisfactory it was far from hopeless. Mr. Taylor and the other shareholders were willing and perhaps anxious to sell, but in our opinion the evidence does not indicate that the company's position had occasioned any real compulsion to sell.

Evidence submitted by Mr. Wallace tends to confirm the view that Best Yeast had not operated successfully. He referred to the almost continuous loss record of the Thorold plant and then stated:

> "A. . . .
>
> In so far as the Liverpool operation was concerned, I don't consider that their operation was a successful operation."
>
> (Hearing, p. 152)

In support of this opinion Mr. Wallace tendered Exhibit H-16, which he stated was compiled from the records of Standard Brands and of Best Yeast, the latter having come into Standard Brands' possession following the acquisition. This exhibit is reproduced here as Table 10:

Table 10

CERTAIN COSTS AS PERCENTAGES OF DOLLAR SALES

BEST YEAST LIMITED

Fiscal Period Ended	Transportation	Advertising	Selling & Administration Expenses	Total
June 30 - 1945	6.0	2.2	23.0	31.2
Dec. 31 - 1950	5.2	3.5	30.8	39.5
Dec. 29 - 1951	5.4	2.5	30.7	38.6
Jan. 3 - 1953	5.1	2.6	32.7	40.4
Jan. 2 - 1954	4.8	2.5	33.3	40.6
Jan. 1 - 1955	4.8	3.8	33.0	41.6

STANDARD BRANDS LIMITED

Fiscal Period Ended	Transportation	Advertising	Selling & Administration Expenses	Total
Dec. 31 - 1945	5.7	6.0	12.3	24.0
Nov. 30 - 1950	5.1	6.8	9.3	21.2
Nov. 30 - 1951	4.6	5.9	8.5	19.0
Dec. 31 - 1952	4.6	6.4	9.4	20.4
Dec. 31 - 1953	4.2	7.8	9.7	21.7
Dec. 31 - 1954	4.0	7.9	9.2	21.1

Mr. Wallace explained that the expenditures shown in the three columns for Transportation, Advertising, and Selling and Administration Expenses, related to the total expenditures of each company expressed as a percentage of their respective total sales in dollars.

The figures in this table indicate that for the years specified Best Yeast's expenditures for transportation, expressed as a percentage of total dollar sales, were slightly higher than those of Standard Brands, that for advertising they were less than half those of Standard Brands, and that for selling and administration they were between three and four times as great. Not only that, but the ratio of Best Yeast's expenditures for selling and administration to total sales had increased from 23 per cent in 1945 to 33 per cent in 1954, while those of Standard Brands had decreased from 12.3 per cent to 9.2 per cent. Again, looking at the total expenditures in the three columns we see that those of Best Yeast increased from 31.2 per cent in 1945 to 41.6 per cent in 1954, while in the same period those of Standard Brands decreased from 24 per cent to 21.1 per cent. Mr. Wallace expressed the opinion that such a very large increase in expenditures for these purposes as that shown for Best Yeast "would wave a red flag in the operation of a business" (Hearing, p. 153).

It should be borne in mind, in considering the figures for the two companies, that the operations of Standard Brands embrace other large-selling products in addition to yeast.

On all the evidence before us the bargaining position of the parties at the time when negotiations were being carried on was, in our opinion, that of a seller that was very willing but not actually forced to sell, and a buyer that was willing to buy because it required enlarged plant facilities for its expanding business.

In these circumstances we shall now consider the argument that in settling the price to be paid for acquiring the Best Company's assets regard should have been had to the earning power of those assets In this connection the Director's counsel pointed to the very different earnings record of the Thorold plant as compared with that of the Liverpool plant, adding that no allowance for this factor had been made in the appraisals of Mr. Simpson and Mr. Norlin.

From a business viewpoint, the assets of a company have a value to its present shareholders that is related to the prospective earning power of those assets in their hands, including any variations in the use of those assets which they may anticipate. Likewise in the eyes of a buyer, those assets have a value related to their prospective earning power in the buyer's hands. The two values may be quite different, depending largely on the use the buyer may be able to make of the assets.

The record is not clear, but we may perhaps assume that Standard Brands, before entering into the contract of January 18, 1955, to acquire Best Yeast, had full information concerning the profit and loss record not only of the Best Company as a whole but of the notably inferior record of the Thorold plant as compared with that at Liverpool. What use was made of such information or what effect it had, if any, upon the negotiations or upon the price finally agreed upon we do not know. On the other hand, the evidence before us is that Standard Brands was faced with plant expansion costs at Ville LaSalle within the next year of from $350,000 to $450,000, that further long-term expansion was contemplated, that the company, in acquiring Best Yeast, was seeking enlarged plant facilities and freight savings and that it was not control or ownership of the Best Company that was desired but its plants and equipment. On this evidence the plants would probably have a higher value to Standard Brands than would be represented by their discounted prospective net revenues estimated on the basis of past experience. Some support for this view is found in Mr. Wallace's evidence that since the acquisition one million pounds of yeast production per year had been transferred from Standard Brands' Ville LaSalle plant to the Best plant at Liverpool, and that plans, not yet finalized, were under way to transfer some yeast production from Ville LaSalle to Thorold (Hearing, p. 215).

In seeking to determine whether or not an unreasonably high price has been paid for acquired assets, the Commission considers that the profitability of those assets is a matter of high importance. In this instance, however, there is very little evidence, and we are unable to say that the profitability of the Best assets prior to the acquisition was not taken into account. It is true that Standard Brands had no detailed appraisal of those assets prior to the acquisition, but a personal inspection and rough valuation had been made and the amount of fire insurance carried on the assets was known ($550,000 on the Liverpool plant subject to a 90 per cent co-insurance clause, and $450,000 on the Thorold plant). These facts, plus the further fact that when the lower of the two appraisals for Standard Brands, that of Mr. Simpson, was made, it led to a total net worth higher by $185,070.43 or 21.71 per cent than the total price actually required for the acquisition, suggest that the profit and loss record of the Best plants may have had some influence in determining the price agreed upon. We are unable to make any finding on the point. Further, on the evidence before us, we do not consider that an argument based on profitability of assets would establish monopolistic intent or anticipated monopoly profits in the circumstances shown.

Of course, if in fact Standard Brands did not have in its possession the profit and loss records of the Best Company as a whole and of each of its two plants, the position claimed on behalf of Standard Brands becomes even stronger, viz., that in acquiring Best Yeast it was obtaining assets at a price satisfactory to it, in view of its expansion needs.

6. Difficulty of Entry Into the Yeast Industry

Entry into the yeast manufacturing industry appears to be reasonably free. As the Statement of Evidence puts it, "anyone can embark upon it, given sufficient capital and the technical assistance." Capital requirements are not excessively large, and there is no reason to doubt that persons with adequate technical qualifications can be found. It seems likely that if very high profits should appear in the industry competition would soon develop, e.g., from other food processors, who could probably enter the business fairly quickly. The position in this regard is, in our opinion, in no way unusual. Further, as the Statement of Evidence says:

> "Nor do there appear to be any special barriers such as monopolistic control of the raw materials by dominant firms in the industry, closely held patent rights or processes, control of distributive facilities, or other similar factors tending to operate as barriers to entry."

This general picture of free entry does not disclose all the relevant facts. For example the Statement of Evidence mentions the fact that in the years since Standard Brands was formed in 1929, Best Yeast was the only new firm to enter the yeast-manufacturing industry, and that at the time of the acquisition of Best Yeast by Standard Brands there was only one other producer of yeast for baking purposes in Canada, viz., Lallemand. This very limited tendency for new firms to enter the field may be chiefly due to the nature of the industry, but the Director, in the Statement of Evidence, takes the position that entry though free, is not easy. The following points raised by the Statement in support of this position are discussed in turn:

(a) Standard Brands owns or controls yeast plants in the Maritimes, Central Canada and Western Canada. Any newcomer is likely to find it extremely difficult to break into the national market in competition with a firm capable of supplying most regional demands from strategically located plants.

Undoubtedly this situation creates some practical difficulties in the way of a new entrant, but these difficulties are not unusual in circumstances where the market is well supplied by existing manufacturers. They may be increased, however, in this instance, by the unity of competitive opposition to be expected where there is one nationwide supplier rather than several suppliers with plants in similar locations.

(b) Yeast is an intermediate product. That is, it is sold to buyers who are themselves manufacturers at a later stage of production.

Such buyers will tend to favour established firms and the goodwill acquired by such firms over a period of years constitutes a decided advantage over newcomers to the industry. In the case of yeast, it is likely that this will be particularly true since its cost is relatively small in relation to that of the finished product, while the consequences of its failure can be disastrous to such product.

Here again, such difficulties are normal to a newcomer who seeks to enter a market where the existing suppliers have built up a reputation for their products and established a substantial measure of goodwill for them. The Commission doubts that they would long prove an insuperable barrier to a newcomer who offered equally good yeast at a slightly lower price, and who did a good competitive selling job.

(c) The yeast industry is dominated by a firm that is financially strong, and with a diversified line of products.

Again, difficulties in the path of new entrants occasioned by this circumstance are normal in Canadian business. A newcomer might also be a financially strong organization, making a variety of products.

(d) Standard Brands came into being as the result of a merger and succeeded in acquiring the only two firms that ever offered it any competition in the yeast field. Such a background is likely to operate as a deterrent to new entrants.

On the evidence, the Commission does not agree with the foregoing paragraph. In the first place, Lallemand has been a significant competitor of Standard Brands for many years, particularly in the major category of fresh bakers' yeast, where in the years immediately preceding the merger it enjoyed 22 per cent or 23 per cent of the market. Secondly, the long period of time during which Standard Brands had opportunity on several occasions to acquire Best Yeast, but failed to take advantage thereof, at least denies any continuous desire to acquire that competitor. Thirdly, the Commission doubts that the experience of Western Pure Foods Ltd. would have much deterrent effect upon a newcomer desirous of entering the field. Here was a case of a small company, whose production even in its best years was less than one-fourth of the minimum Mr. Wallace thought necessary for successful operation (in his opinion a minimum annual production of three million pounds would be required), which nevertheless in five years of grave economic depression from 1930 to 1935, succeeded in multiplying its sales of yeast and its profits, which in those five years, by the retention of profits in the business, more than doubled its original capital investment of $100,000, and which then sold out to Standard Brands, its big competitor, for $300,000. On the face of it this was a remarkable achievement, one which an enterprising business man might be inclined to emulate rather than to avoid,

though perhaps not to the end result of selling to a competitor. In this connection it may be noted that there is no evidence of threats or other pressure being exerted in order to induce Western Pure Foods Ltd. to sell. The evidence is brief indeed, but what it records is simply a request for a price at which the company would be willing to sell, a very good price asked for a highly successful business, and the acceptance of that asking price by Standard Brands.

(e) The Director devoted some attention to analyzing the expenditures of Standard Brands and Best Yeast for advertising and promotion of consumers' yeast, the data being obtained from returns of information made to him by the companies. Tables prepared from the material in these returns are set out in the Statement of Evidence. They show that Standard Brands' expenditures for advertising and promotion purposes in connection with consumers' yeast were much larger than those of Best Yeast for the years covered, viz., 1945, 1950, 1954, 1955 and 1956. This might be expected, as Standard Brands was much the larger company, enjoying a very much larger share of the market across Canada than Best Yeast. The tables, however, show further that Standard Brands' advertising and promotion expenditures constituted a much higher percentage of its dollar sales than did those of Best Yeast in relation to its dollar sales. Thus it is clear that Standard Brands made much greater use, both absolutely in terms of dollars spent, and relatively in terms of percentage of sales, of advertising, than did Best Yeast. No suggestion has been made to the Commission, however, that there was anything improper in any of Standard Brands' advertising activities. The Director simply referred to advertising in connection with his argument concerning difficulty of entry into the industry. His argument was worded, in part, as follows:

> "In the case of consumers' yeast, public acceptance of Standard Brands' product resulting from an established reputation and an extensive advertising program serves to increase the cost barriers facing new entrants. In the case of an established firm, where the advertising costs are spread over total sales of the business, the cost per unit will often be relatively small . . . New entrants, endeavoring to gain a foothold in the market, may find that limited initial sales will not support the volume of advertising necessary to achieve that foothold, particularly as the result may be to induce the established firm to step up its own advertising expenditures."

There is no doubt that extensive intelligent advertising, coupled with an established reputation for a company's product, will aid materially in creating and maintaining consumer preference,

which in turn will raise real problems for a new manufacturer attempting to break into the market. Such difficulties are almost always encountered when a new manufacturer attempts to enter an established industry. There has been no suggestion that Standard Brands' advertising expenditures were unreasonably high or that they were made in furtherance of a monopolistic purpose or policy.

The Commission has reached the opinion that the evidence before it on this question is slight and unconvincing, and does not support a conclusion that difficulties of entry into the yeast industry have been or are great enough to deter a capable entrepreneur, or differ in kind or much in degree from those usually faced by new manufacturers in this country.

CHAPTER V

EFFECTS OF THE MERGER

The obvious effect of the acquisition of Best Yeast by Standard Brands is the structural one of reducing the number of independent manufacturers of yeast for baking purposes from three to two. The smallest of the three companies has been merged with the company which was already much the largest. This necessarily involves a reduction in competition in the industry. The competitive effect may be broken down as follows in respect of the four kinds of yeast:

(a) Fresh Consumers' Yeast

As Lallemand ceased manufacturing this kind of yeast in 1955, the acquisition means that there is now no independent competition for Standard Brands. It should be remembered that in recent years this kind of yeast has been sold by Standard Brands and Best Yeast in the eastern region only, almost entirely in the Maritimes. In this part of Canada Table 8 indicates that prior to the acquisition Standard Brands and Best Yeast obtained fairly equal shares of a total market of slightly less than half a million dollars annually. Since the merger sales of Best Yeast have lost ground in comparison with Fleischmann's yeast, and by 1957 sales of Best yeast had fallen to 39.37 per cent while those of Fleischmann's had increased to 60.63 per cent.

(b) Dried Yeast

Dried bakers' yeast constitutes a very small segment of the total yeast market. Figures obtained by the Director from the companies show sales in 1950 totalling only $46,743, increasing in subsequent years and reaching $128,409 in 1956. The Statement of Evidence states that Lallemand sells no dried bakers yeast, but this statement was challenged by Mr. Wallace at the hearing. Subsequent to the hearing Lallemand advised the Commission by letter that it did sell some dried bakers' yeast in two pound tins, its sales amounting to $5,656 in 1955, $6,833 in 1956 and $5,168 in 1957. Before 1955 its sales were very small. Of the bakers' dried yeast sold by Lallemand in 1956 only 33 per cent was sold to commercial bakers, with 43 per cent going to grocers and 24 per cent to camps, governments and hospitals. In 1957, 39 per cent was sold to bakers, 29 per cent to grocers and 32 per cent to camps, governments and hospitals.

On the basis of these facts Lallemand does not appear to be a serious competitor in the field of dried bakers' yeast.

On the other hand Best Yeast's sales of this kind of yeast, prior to the acquisition, were confined to the eastern region. In that region its sales amounted to $11,587 in 1950, to $6,350 in 1954 and $33,214 in 1955. Standard Brands' sales have been chiefly in the eastern and western regions. In the eastern region its sales were $24,354 in 1950, $33,535 in 1954 and $37,958 in 1955. In the same years its total sales were: $35,156 in 1950, $65,385 in 1954 and $77,882 in 1955. In 1956 its eastern region sales increased to $42,250 and its total sales to $98,344, while those of Best Yeast showed a decline.

The foregoing figures for Standard Brands and Best Yeast were obtained by the Director from the companies by way of the returns and answers to questionnaires previously referred to.

Following the acquisition it seems clear that competition in respect of dried bakers' yeast has been slight but the market is so small in relation to the whole market for yeast or even for dried yeast that for the purpose of this report little importance can be attached to this anti-competitive result.

Somewhat greater significance may be found in examining what has happened to total sales of dried yeast, consumers' and bakers', by the three companies since the acquisition. Table 5 shows that whereas in 1954, the last year before the acquisition, Standard Brands shipped 1,088,820 pounds of dried yeast having a value of $2,010,395 and constituting 86.85 per cent of the total industry shipments of dried yeast, its sales increased in 1956, the first year after the acquisition, and again in 1957. In the latter year its sales were 1,162,814 pounds having a value of $2,463,005 and constituting 89.89 per cent of total industry sales of dried yeast.

Table 6 shows that in 1954 Best Yeast shipped 140,946 pounds of dried yeast, constituting 11.24 per cent of total industry shipments. A sharp drop occurred in 1955, followed by smaller drops in 1956 and 1957. In the last-named year its sales were only 77,072 pounds, constituting 5.96 per cent of total industry sales. Thus the decline in Best Yeast sales of dried yeast which began after 1951, as previously noted, has continued since the acquisition.

Table 7 shows that in 1954 Lallemand shipped 23,872 pounds of dried yeast, constituting 1.91 per cent of total industry shipments. A sharp increase to 73,790 pounds and 6.01 per cent occurred in 1955, followed by successive drops in 1956 and 1957. In the last-named year its sales were 53,730 pounds, constituting 4.15 per cent of total industry sales.

The situation in the substantial portion of the total yeast market represented by dried yeast may be summarized as follows:

The very large portion (86.85 per cent) of the market enjoyed by Standard Brands in 1954 has grown since the acquisition to 95.85 per cent (including Best Yeast) in 1957. Its only independent competitor is Lallemand, with 4.15 per cent of the market in 1957. There is some written evidence that Lallemand in 1956 was actively seeking to increase its dried yeast sales, notably in Manitoba (Serial 125), but the successive drops in its dried yeast sales in 1956 and 1957 do not suggest that its competition has become a more serious factor in this portion of the market.

(c) Fresh Bakers' Yeast

This is by far the largest portion in quantity of the total yeast market and substantially the largest portion in dollar value. From the returns and answers to questionnaires furnished by the companies to the Director the total industry sales in the years 1950, 1954, 1955 and 1956 and the percentages thereof enjoyed by each company appear to have been as shown in Table 11, to which have been added corresponding figures for 1957, from information supplied to the Commission since the hearing:

Table 11

SALES OF FRESH BAKERS' YEAST AND SHARE OF EACH COMPANY, 1950 AND 1954-1957

	Fresh Bakers' Yeast Total Sales	Percentages of each company		
		Standard Brands	Best	Lallemand
	$			
1950	3,826,866	74.25	6.22	19.53
1954	4,584,834	70.69	6.06	23.25
1955	4,706,368	71.84	5.97	22.19
1956	4,866,522	71.25	4.14	24.61
1957	5,143,926	74.75 (including Best)		25.25

Table 11 presents quite a different picture than those we found for the other kinds of yeast. While Standard Brands enjoyed the lion's share of the market, Lallemand was far from being an insignificant competitor. Furthermore its share of the market has increased somewhat since the merger, reaching its highest point, 25.25 per cent, in 1957. Conversely, Standard Brands in 1950 enjoyed 74.25 per cent of the market and the combined total for Standard

Brands and Best Yeast was 80.47 per cent. In 1954, the year before the acquisition of Best Yeast by Standard Brands, the two companies together enjoyed 76.75 per cent of the market, and in 1957, two years after the merger, their combined total was only 74.75 per cent, not much more than Standard Brands alone enjoyed in 1950.

It is clear from these figures that Lallemand is an active competitor of Standard Brands in respect of fresh bakers' yeast, and has been able to increase its percentage of this growing market since the merger.

We have examined the situation in respect of all four subdivisions of the total yeast market in order that the effect of the merger on each might be seen. The Commission nevertheless seriously doubts whether in considering the alleged harmful effects of the merger the yeast industry should be broken down into its subdivisions of bakers' fresh and bakers' dried, consumers' fresh and consumers' dried. A company desiring to manufacture dried yeast must first make fresh yeast, and a company that makes fresh yeast can fairly easily carry the process one step further and produce dried yeast. We have not heard that there is any difficulty in obtaining yeast strains suitable for dried yeast. Again, the market for fresh yeast has about twice the value in dollars of that for the further processed dried yeast. With these conditions fundamental to the industry it is probably neither desirable nor justifiable to attempt to arrive at a general conclusion on the basis of subdivisions of the market. In our opinion the market to be regarded is the yeast market as a whole. On this basis the merger has unquestionably reduced competition by eliminating one competitor, but active competition still exists on the part of Lallemand, even on a growing scale. It may be noted here that Lallemand's market is chiefly in Quebec, according to Mr. Wallace, and its competition is therefore more significant in that province than elsewhere.

In the Statement of Evidence the Director paid particular attention to the stronger position of Best Yeast, marketwise, in the eastern region than in Canada as a whole, and to the elimination of Best Yeast as a competitor of Standard Brands in that region. We have already seen (Table 8) that down to 1955, in the comparatively small subdivision of fresh consumers' yeast, the sales of Standard Brands and Best Yeast were about equal. For the entire yeast industry the returns and answers to questionnaires of the companies give the sales in dollars and the percentage shares of the three companies, in the eastern region and in the whole of Canada, shown in Table 12, for the stated years.

Table 12

TOTAL SALES OF YEAST AND SHARE OF EACH COMPANY, EASTERN REGION AND CANADA, 1950 AND 1954-1956

	Standard Brands		Best Yeast		Lallemand	
	Dollars	Percentage	Dollars	Percentage	Dollars	Percentage
1950						
Eastern region	1,718,491	75.48	467,765	20.55	90,436	3.97
All Canada	4,737,470	75.01	739,174	11.71	838,715	13.28
1954						
Eastern region	1,835,430	77.08	429,677	18.05	115,937	4.87
All Canada	5,441,552	74.81	668,801	9.19	1,163,903	16.00
1955						
Eastern region	1,945,138	77.82	443,025	17.73	111,258	4.45
All Canada	5,717,430	76.03	658,364	8.75	1,144,192	15.22
1956						
Eastern region	2,113,622	80.74	388,833	14.85	115,405	4.41
All Canada	6,044,802	77.02	512,294	6.53	1,290,750	16.45

This table indicates that prior to the merger Best Yeast enjoyed almost twice as large a share of the total market for yeast in the eastern region as it did in the whole of Canada. It also indicates that it lost ground in the eastern region, as in all Canada between 1950 and 1954, prior to the merger. In 1955 it suffered a further small drop, and in 1956, the first full year after the merger, a fairly sharp drop in the eastern region and also in all Canada. The table further indicates that Lallemand has never enjoyed as much as 5 per cent of the market in the eastern region, with relatively little change from year to year.

The Commission considers that the table understates the percentages of the shares of the total yeast business enjoyed by both

Best Yeast and Lallemand in the Maritime Provinces, and therefore overstates the percentage enjoyed by Standard Brands. Our opinion is based on the fact that the eastern region sales reported by Standard Brands included sales in the whole of Quebec as well as the four Maritime Provinces, while those reported by Best only included eastern Quebec along with the Maritimes and those reported by Lallemand covered the Maritimes alone. However, after making reasonable allowance for errors in the table consequent upon these differences in the area covered, the greater strength of Best Yeast in its eastern region than elsewhere seems clearly established, and it seems safe to conclude also that Lallemand has not been an important factor in the Maritimes. While Lallemand may be able to gain a larger share of this market in the future, the immediate effect of the merger has been to increase substantially the share enjoyed by Standard Brands, which already held the largest share.

What is the extent of the economies resulting from the merger? Integration of the operations of Standard Brands and Best Yeast was achieved by the following steps:

(a) Between August 1, 1955, and December 1, 1955, all sales activities of Best Yeast, Limited were transferred to Standard Brands' sales offices. In effect, therefore, the plants at Liverpool, Nova Scotia, and Thorold, Ontario, now operate only as manufacturing units of Standard Brands.

(b) The warehouses of Standard Brands Limited are used for Best Yeast products.

(c) Distribution of yeast to bakeries, hotels, hospitals and other consuming institutions and grocery store outlets is handled by Standard Brands Limited on a direct basis, with deliveries being made either in its own trucks or by common carrier. The use of jobbers in the distribution of fresh consumers' yeast, formerly employed by Best Yeast to some extent in the Maritimes, has been discontinued.

(d) The manufacturing activities of the plants of the two companies have been re-arranged. The Thorold plant, which formerly made dried consumers' and fresh bakers' yeast now makes only fresh bakers' yeast under the Best Yeast label. The Ville LaSalle plant manufactures all the dried yeast sold by Standard Brands, under both Fleischmann and Best Yeast labels, and also makes fresh bakers' yeast under the Fleischmann label. The Liverpool plant makes fresh consumers' yeast and fresh bakers' yeast under both Fleischmann and Best Yeast labels. Mr. Wallace stated at the hearing that a million pounds of yearly yeast production formerly made at Ville LaSalle had been transferred to the Liverpool plant. His evidence did not specify further, but the transfer almost certainly included all the fresh consumers' yeast made by the company as that product is sold only in the Maritime

Provinces. He added that plans were under way to transfer some yeast manufacture from Ville LaSalle to Thorold, but the transfer had not yet been accomplished (Hearing, p. 215).

These changes have probably increased efficiency of manufacture, partly by taking some of the load off the Ville LaSalle plant and partly by concentrating manufacture of certain kinds of yeast at particular plants. Further, the handling of sales under both Fleischmann and Best Yeast labels by one sales force instead of two has probably resulted in some saving in costs. There should likewise have occurred some saving in general administration expenses resulting from unification of top management, bearing in mind Mr. Wallace's view that Exhibit H-16 showed very high and increasing costs for Best Yeast under this heading prior to the merger. Again savings in freight charges have probably been made. Mr. Wallace gave the following evidence on this point:

> "A. . . . we had been faced from time to time, with increased freight and express charges and that had quite a material effect on our operations. So our thought was that if we could get existing plant capacity spread out at more strategically located points for the distribution of the products it would be to our advantage to do so. . . ."
>
> (Hearing, p. 145)

This evidence suggests that substantial freight savings might be expected from the merger, but we have no evidence as to what savings have actually materialized. Finally, some savings in advertising costs may have occurred (expenditures in respect of Best yeast have been less than before the merger), but again we have no evidence concerning the reasons for the reduction.

CHAPTER VI

CONCLUSIONS AND RECOMMENDATIONS

Section 2(e) of the Combines Investigation Act contains alternative definitions of a "merger, trust or monopoly", the paragraph reading as follows:

> "2. (e) 'merger, trust or monopoly' means one or more persons
>
> (i) who has or have purchased, leased or otherwise acquired any control over or interest in the whole or part of the business of another, or
>
> (ii) who either substantially or completely control, throughout any particular area or district in Canada or throughout Canada the class or species of business in which he is or they are engaged,
>
> and extends and applies only to the business of manufacturing, producing, transporting, purchasing, supplying, storing or dealing in commodities which may be the subject of trade or commerce; but this paragraph shall not be construed or applied so as to limit or impair any right or interest derived under the Patent Act, or under any other statute of Canada".

It must be remembered that a "merger, trust or monopoly" only becomes a "combine" and therefore forbidden by the Act where, in the words of Section 2(a)(vi) it "has operated or is likely to operate to the detriment or against the interest of the public, whether consumers, producers or other".

The Statement of Evidence alleges that Standard Brands Limited, by virtue of its control over Best Yeast, Limited, constitutes a "merger, trust or monopoly" within the meaning of both subparagraphs (i) and (ii) of Section 2(e). The allegation is not worded specifically in terms of either subparagraph and the supporting reasons refer only to subparagraph (ii). However, since the evidence relates to the acquisition of Best Yeast by Standard Brands, there is no doubt in the Commission's mind that the Director intended the allegation to relate to both subparagraphs.

Counsel for Standard Brands at the hearing raised an argument new to the Commission. He submitted that subparagraph (i) of Section 2(e) did not apply to the facts disclosed in this inquiry. His contention was that the concept of "acquiring control over" or "acquiring an interest in" the business of another necessarily imports that that other person's business continues in being. On this construction of the subparagraph, it would only apply to a merger in which the business over which control, or in which an interest, was acquired, continued in operation after the merger, separate from the acquiring business. Counsel then contended that in this instance Standard Brands had bought Best Yeast lock, stock and barrel, outright, and that there was now "no business of another" over which Standard Brands had control, nor "any business of another" in which it had a continuing interest.

The Commission cannot agree with this argument. The fact is that Best Yeast, Limited has not been wound up. It is still in existence, all the shares being owned by Standard Brands. In our view, notwithstanding the practical integration of the business of the two companies, this constitutes "control over or interest in the business of another," within the meaning of the subparagraph.

The Commission, however, does not rely for its opinion upon the technicalities that the corporate existence of Best Yeast has not been terminated and that in law Standard Brands' control of the business is founded on its ownership of all the shares. In our view the words of the subparagraph are not properly interpreted in the manner contended for by counsel. Paragraph (e) of Section 2 is intended to define a merger, trust or monopoly. It is scarcely conceivable to us that, in the absence of words clearly indicating such an intention, Parliament would have included under the terms "merger" and "monopoly" cases in which a partial interest or control was acquired and excluded any cases in which the total interest or total control changed hands. We see no indication of such an intentnion in the language of the subparagraph. The words "any control over or interest in" must, in our opinion, include "total" as well as "partial" control or interest. The words that follow, viz., "in the whole or part of the business of another" are equally comprehensive. We see no ground for interpreting the words of the subparagraph as meaning that a total acquisition, in which the acquired business ceases to exist and is completely swallowed up by the acquiring business, is any less a merger than an acquisition of a partial interest or control in a business which continues to function. In our view, the proper interpretation is that the "business of another" must exist at the time of the acquisition, but whether it continues after the acquisition or not is immaterial in this connection.

In our opinion the acquisition of Best Yeast by Standard Brands constitutes a merger within the meaning of Section 2(e)(i) of the Combines Investigation Act.

It is also our opinion that since the acquisition Standard Brands has been in a position in which it substantially controls the yeast manufacturing business, at least in the Maritime Provinces and probably in other areas of Canada. On this view Standard Brands constitutes a "merger, trust or monopoly" within the meaning of Section 2(e)(ii) of the Act.

Our opinion on this point is founded on the very large share of the yeast business now enjoyed by Standard Brands, not upon any power to exclude competitors. The conclusive factors in the evidence may be stated briefly:

(a) Lallemand is the only competitor of Standard Brands manufacturing yeast for baking purposes.

(b) Lallemand's share of the total yeast market in Canada in the years 1950, 1954, 1955 and 1956, according to information supplied by the manufacturing companies to the Director, and in the year 1957, according to information supplied by the companies to the Commission since the hearing, has been as follows in terms of dollar sales:

1950	-	13.28%
1954	-	16.00%
1955	-	15.22%
1956	-	16.45%
1957	-	16.63%

Lallemand's share of the total market has increased very slightly since 1954, the year preceding the merger, but it is still only one-sixth, the other five-sixths being enjoyed in 1956 and 1957 by Standard Brands and its subsidiary.

(c) Lallemand's business is mainly in Quebec. We have no specific figures for Lallemand's Quebec business, but Mr. Wallace, president of Standard Brands, gave the following evidence:

> "A. Well, the Lallemand Company since 1923 has been active in both the sale of yeast to the baker and yeast to the consumer. They have always been actively engaged. Their business primarily has been in the Province of Quebec although from time to time they have had operations as far west as Regina and, of course, in the Maritime provinces."

(Hearing, p. 170)

And again:

"Q. Are you able to tell the Commission whether the Province of Quebec is the Lallemand's largest business area?.

A. Undoubtedly."

(Hearing p. 174)

As Lallemand's share of the yeast business of Canada as a whole is about one-sixth of the total market, the foregoing evidence clearly indicates its share in some areas outside Quebec must be less than one-sixth.

Looking particularly at the Maritimes we find its position to be as follows:

It has no part of consumers' fresh yeast sales, which in the Maritimes are in the neighbourhood of half a million dollars a year. We have no information concerning its share in the Maritimes of the small segment of the industry described as bakers' dried yeast, but we have already seen in Chapter V that its total sales in that category for the whole of Canada have not reached $7,000 in any of the last three years. We have seen from Table 7 that Lallemand's share of the substantial volume of dried yeast (including bakers' with consumers') for all Canada has been quite small, and we know that nearly all of that share was in dried consumers' yeast. Referring again to the information supplied by Lallemand to the Director, we find its Maritimes business has been disproportionately low in relation to population during the years 1954, 1955 and 1956, in the major category of dried consumers' yeast. This appears from the figures reproduced in Table 13:

Table 13

LALLEMAND - Sales of Yeast, 1954-1956

	Dried Consumers' Yeast $	Fresh Bakers' Yeast $
1954		
Maritime Provinces	2,367	104,850
All Canada	17,944	1,065,945
1955		
Maritime Provinces	4,440	104,533
All Canada	65,146	1,044,542
1956		
Maritime Provinces	5,191	110,254
All Canada	93,104	1,197,646

While, because many housewives in the Maritime Provinces still use fresh yeast, the consumption of dried consumers' yeast is relatively less there than elsewhere in Canada, it is clear from Table 13 that Lallemand's sales in this category in the Maritimes are small indeed.

In the largest category of all, fresh bakers' yeast, Table 13 indicates that Lallemand has been doing about 10 per cent of its business in the Maritimes.

The Canadian census for 1956 gives the population of the four Maritime Provinces as being 10.9 per cent of the total Canadian population. This suggests that Lallemand's share of fresh bakers' yeast in the Maritimes may be about the same as its share in Canada as a whole. We have no figures for the sales of Fleischmann and Best yeast for the Maritime Provinces alone and there may be some difference between the per capita consumption of fresh bakers' yeast in those provinces and the per capita consumption in Canada as a whole, but we consider it unlikely that complete information on these points would lead to a conclusion materially different from that suggested.

Our conclusion, on all the evidence before us is that in the Maritimes Lallemand's share of the total yeast market is substantially less than its share in Canada as a whole.

Having come to the conclusion that the evidence discloses a "merger, trust or monopoly" under both subparagraphs (i) and (ii) of Section 2(e) of the Act we must consider whether it "has operated or is likely to operate to the detriment or against the interest of the public, whether consumers, producers or others".

For this purpose the facts disclosed in the inquiry and reviewed in Chapters III, IV and V lead to certain conclusions which are highly significant.

(a) No monopolistic intent on the part of Standard Brands has been shown. Whatever may have been the motive which led Standard Brands to acquire Western Pure Foods Ltd. in 1935, this one incident twenty years prior to the acquisition of Best Yeast, cannot be said to have established a pattern of acquiring competitors nor do we consider it has much bearing upon the later acquisition, where the situation was radically different.

(b) The price paid to acquire Best Yeast has not been shown to be excessive, nor was Best Yeast in any way under pressure from Standard Brands to sell. In this connection the evidence is that the approach which led to the sale came from Best Yeast, not from Standard Brands. Over the years, several similar approaches had been made by Best Yeast to Standard Brands, but Standard Brands had not been interested. The profit and loss record of Best Yeast supports the view that though its position was not desperate, a sale might be highly desirable to its absentee controlling shareholders.

(c) The reasons given by Mr. Wallace for the acquisition, viz., to provide needed and anticipated expansion of productive capacity and to reduce freight costs by having plants better located to supply portions of the market, are consistent with the facts and appear to the Commission to be sound business reasons.

(d) Conditions of entry into the yeast business do not present unusual difficulties. Raw materials appear to be available. Enormous capital is not required. Technical skills are required, but no suggestion has been made that qualified personnel are not available. In fact the difficulties in the path of a new manufacturer appear to be those that are normal in an established industry.

(e) The only change in the pre-merger price relationship that has been reported to us is the elimination by Standard Brands of certain small discounts previously allowed by Best Yeast to jobbers on purchases of dried consumers' yeast. This change followed changes in the manufacturing process of Best yeast (largely through the substitution of molasses for waste sulphite liquor), by which Best yeast was made identical with Fleischmann's. Apparently the jobber was the only one who had benefitted by the discounts. Mr. Wallace stated

that Best yeast was improved by the change in process. If so, it may have become easier to sell. Under these circumstances we cannot say that the price increase to the jobber involved detriment to the public.

(f) The abandonment of waste sulphite liquor as a growth medium for yeast seems to have been prompted solely by sound business reasons.

All the foregoing factors are favourable or at least not adverse to the position of Standard Brands. Against them has to be set the one very important factor that the merger, by which much the largest manufacturer in an industry in which there were only three, acquired the smaller of its two competitors, has considerably narrowed both existing competition and the opportunity for competition in the industry. What may be called the monopoly position of Standard Brands has been strengthened. It is, since the merger, the only manufacturer of fresh consumers' yeast. It makes almost all the dried yeast in Canada, both bakers' and consumers', as is seen from Table 7, which indicates that the dried yeast sales of Lallemand, its only competitor, constituted only 5.36 per cent of total dried yeast sales in 1956, and only 4.15 per cent in 1957. Only in the field of fresh bakers' yeast is Lallemand's competition of serious extent. Here, as we have seen, Lallemand's share of the growing market has been increasing, reaching its highest point to date in 1957, 25.25 per cent. In this most important part of the yeast market Lallemand appears to be providing significant competition at least in certain areas. Nevertheless, even here Standard Brands has about 75 per cent of the market.

The situation in the industry as a whole is one in which Standard Brands may well feel its position is fairly secure. It is not one in which the competition of other manufacturers acts as a constant spur to make innovations, to increase efficiency and to lower costs in every phase of the industry. When the pressure to make improvements is slackened there is a natural tendency not to devote as much time and energy to this end as would be the case under fully competitive conditions. To the extent that improvements do not occur or are delayed by reason of this tendency, the public is deprived of the possibility of benefitting from such improvements.

Under these circumstances, if the provisions of the Combines Investigation Act relating to mergers, trusts and monopolies should be interpreted in the same manner as the law relating to combines arising from agreement, viz., that the public has a specific interest in the maintenance of competition, and that any substantial interference with competition in itself constitutes public detriment, without proof of specific or actual public injury and without regard to any beneficial results, a finding adverse to Standard Brands would follow.

However, our courts have hitherto had very little opportunity to apply anti-combines law to merger situations, and it is possible that distinctions may be found in such cases as compared with the established rules applicable to cases arising from agreement.

In any event the Commission deems it desirable to mention some additional features found in this particular case. Best Yeast, for instance, does not appear to have been an aggressive or even very active competitor. Its share of the market has been decreasing for years. If profits can be taken as an indication of efficiency its record in this regard had not been good. Its controlling shareholders did not live in Canada and on a number of previous occasions had tried to interest Standard Brands in acquiring the company. Thus, the elimination of its competition was not as serious, from the public point of view, as might otherwise have been the case.

Again, there has been no suggestion that Standard Brands has taken advantage of its position to raise prices with a view to monopoly profits. The possibility that such steps might be taken is inherent in the situation and should not be ignored, but there is no evidence that any such intention exists or is being contemplated. Further, if any such move were made, resulting in unreasonably high profits, not only would the likelihood of Lallemand's competition being intensified be increased, but since entry into the industry is not abnormally difficult, it seems likely that others would come into the field, e.g., a well-established food processing company.

We have noted earlier that sales of yeast under the Best label have continued to decline since the merger. However, we do not regard the Director's prediction that a continual decline may be anticipated as raising any matter differing from the acquisition itself. Standard Brands' present policy is to offer both brands freely. Even if its policy should change it must be remembered that the two yeasts are now identical in content and quality and that the evidence is that in the result the quality of Best yeast has been improved. Therefore the possible future elimination of one brand of yeast, which differs from the other only in name, is merely one feature of their present control.

Finally, in a merger there is the possibility, not found in combines created by agreement, that economies will be effected from which the public will derive benefit, and which from the point of view of economics, should be balanced against the detriment or likelihood of detriment flowing from decreased competition. In this case as indicated at the end of Chapter V, we consider that some economies and improvements in the efficiency of production and distribution have been effected as a result of the merger. In total these may have been substantial, but on the evidence before us, we are quite unable to assess the value of the improvements that have occurred or may yet occur.

Further we have no evidence on which to decide what part, if any, of the benefits resulting from such improvements have been passed on to the public. Examination of price lists obtained from Standard Brands for both Fleischmann's and Best yeast does not afford any assistance. Since the merger, changes have occurred in the price of certain quantities of most varieties of yeast in some areas of Canada, and most of these changes have been upward. However, we have no means of knowing the reasons for the increases, nor whether they would have been greater or less in amount if there had been no merger.

In view of the degree of concentration which had existed previously in the yeast industry, the Commission believes that in the circumstances in which Best Yeast wished to dispose of its business the public interest would have been better served if a buyer had been found who would have been a new entrant into the industry, particularly if the change in ownership had brought with it resources in management and capital which would have added to effective competition in the industry. Such a buyer was not found, and in the absence of evidence of intent on the part of Standard Brands to eliminate Best Yeast as a competitor or of activities directed to that end prior to the negotiations for the sale of the properties of Best Yeast the Commission is not convinced that the public interest has been so affected as to justify recommending action to alter the integration of manufacturing operations which has been accomplished or the dissolution of the merger. We have already pointed out that if Best Yeast had been a more active competitor, or if its operations had been indicative of expansion rather than decline, our view might well be different. In this case there has been no suggestion of the acquisition of plants for the purpose of closing them. Instead the evidence indicates that operations at the acquired plants may be more extensive in the future than they were when under the control of the previous owners.

We are concerned at the reduction in competition which has occurred in the yeast industry by reason of the merger and the possibility of long-term injury to the public which an approach to a monopoly necessarily creates. This possibility would be greatly enhanced if any further merger should occur in the yeast industry as presently constituted, as a single supplier would be the result. The evidence does not contain any suggestion of such a possibility, but we think we should express our opinion that Standard Brands not only should not be permitted to acquire its presently remaining competitor, but unless the structure of the industry is greatly altered it should not be permitted to acquire any new competitor that may enter the field. In this connection, while information is lacking to us on a number of relevant points, the very low level of yeast imports under the quite moderate tariff rates now existing suggests that tariff adjustment would be unlikely to serve as an appropriate means for improving competitive conditions in this industry. The view of Mr. Wallace

that yeast, particularly the more perishable fresh yeast, is not readily adapted for international trade appears to be well founded.

(Sgd.) C. R. Smith
Chairman

(Sgd.) A. S. Whiteley
Member

Ottawa,
May 14, 1958.